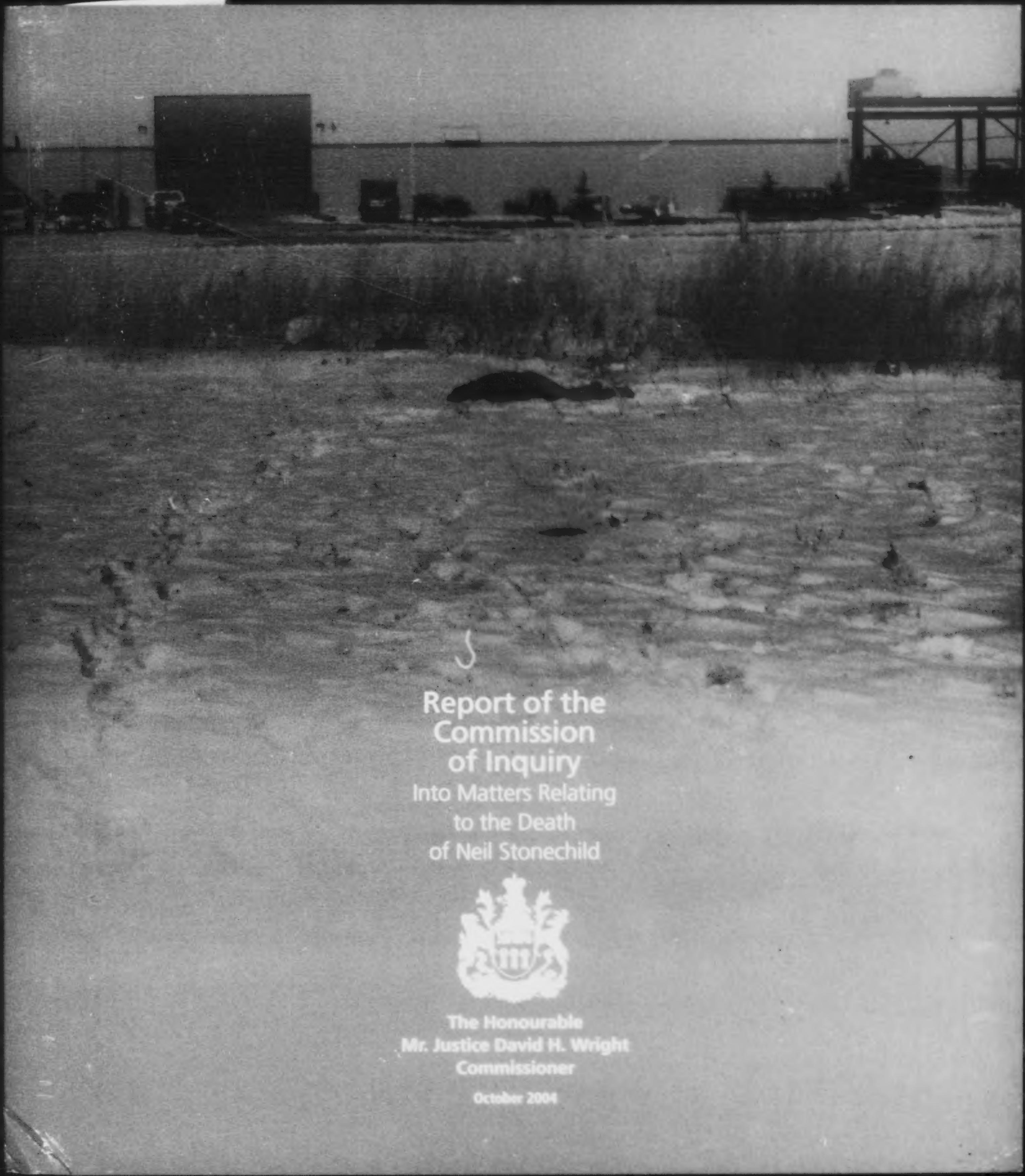

Report of the Commission of Inquiry

Into Matters Relating to the Death of Neil Stonechild

The Honourable
Mr. Justice David H. Wright
Commissioner

October 2004

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105-00584/

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Introduction

Overview of the Facts

On November 29th, 1990, two construction workers discovered the frozen body of a young male in a field in the northwest section of the City of Saskatoon. The deceased was subsequently identified as Neil Stonechild, age 17.

As the police investigation unfolded on that day and subsequently, it was established that Mr. Stonechild had last been seen on November 24/25 in a residential area in the western part of the City. The coroner attended the death scene as did members of the Saskatoon Police Service, including an Identification Officer and a Canine Unit Officer.

The death scene lay in an industrial area north of 57th Street. The field was undeveloped land. An autopsy was subsequently performed at St. Paul's Hospital in Saskatoon. The Pathologist who conducted the autopsy concluded that Mr. Stonechild died of hypothermia. The weather at the time of his disappearance was extremely cold. On the night of his disappearance the temperature fell to -28.1 degrees Celsius. The Saskatoon Police Service investigated the death and determined that there was no evidence of foul play.

Subsequent events raised the question as to whether the youth had been in police custody on the evening of November 24/25. In particular, it was suggested he had been picked up after a complaint was made against him of disorderly conduct at an apartment complex called Snowberry Downs. His companion of the evening was Jason Roy, age 16. Mr. Roy told various persons at the time and later that he had seen his friend, Neil, in the back of a Saskatoon Police cruiser on Confederation Drive on the evening of November 24/25, and that his friend was bloody and calling for help.

Newspaper reports appeared from time to time setting out the Stonechild family suspicions that the Saskatoon Police Service had not adequately investigated the youth's death. There were early suggestions he had been killed by Gary Pratt. This allegation proved groundless. It was suggested that the two Saskatoon Police Service members who answered the call to the disturbance attributed to Mr. Stonechild had taken him from the scene to the remote area of the city and abandoned him. It was confirmed that he was drunk on the evening in question and that he had caused a disturbance at Snowberry Downs and apparently an earlier disturbance at a 7-Eleven store located on Confederation Drive, close to the Snowberry Downs site.

There were other complaints against the Saskatoon Police Service during this time and later about members transporting Aboriginal persons to remote locations in and outside of Saskatoon. Two police officers were ultimately charged and convicted of unlawful confinement of an Aboriginal male, Darrel Night. Night survived.

In the year 2000, the Royal Canadian Mounted Police were instructed to carry out an investigation of Neil Stonechild's death and that of other persons who had been found dead in remote locations. On February 19, 2003, the Minister of Justice of the Province of Saskatchewan established a judicial commission to inquire into the death of Neil Stonechild and the investigations carried out by the Saskatoon Police Service and the RCMP. The Commission began sitting on September 8th, 2003, at the City of Saskatoon. The Inquiry was concluded on May 19, 2004.

Creation of the Inquiry

The Public Inquiries Act

The Commission of Inquiry was established pursuant to *The Public Inquiries Act*.[1] The provisions of *The Public Inquiries Act* are reproduced below:

"Short title

1 This Act may be cited as The Public Inquiries Act.

Commissions of inquiry

2 The Lieutenant Governor in Council, when he deems it expedient to cause inquiry to be made into and concerning a matter within the jurisdiction of the Legislature and connected with the good government of Saskatchewan or the conduct of the public business thereof, or that is in his opinion of sufficient public importance, may appoint one or more commissioners to make such inquiry and to report thereon.

Power to summon witnesses

3 The commissioners shall have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to inquire.

Power to compel attendance of witnesses

4(1) The commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

(2) The commissioners and any counsel engaged pursuant to section 5 shall have the same privileges and immunities as a judge of the Court of Queen's Bench.

Services of experts

5(1) The commissioners, if thereunto authorized by the Lieutenant Governor in Council, may engage the services of such accountants, engineers, technical advisers or other experts, clerks, reporters and assistants as they may deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry.

(2) The commissioners may authorize and depute any such accountants, engineers, technical advisers or other experts, or any other qualified persons, to inquire into any matter within the scope of the commission.

---

[1] R.S.S. 1978, c. P-38

(3) The persons so deputed when authorized by the Lieutenant Governor in Council, shall have the same powers as the commissioners have to take evidence, issue subpoenas, enforce the attendance of witnesses, compel them to give evidence and otherwise conduct the inquiry."

Order-in-Council

The Commission of Inquiry was created on February 19, 2003, by Order-in-Council.[2] The Order in Council reads:

"19 February 2003 114/2003

TO THE HONOURABLE

THE LIEUTENANT GOVERNOR IN COUNCIL

The undersigned has the honour to report that:

1 Sections 2 and 5 of *The Public Inquiries Act* provide, in part, as follows:

"2 The Lieutenant Governor in Council, when he deems it expedient to cause inquiry to be made into and concerning a matter within the jurisdiction of the Legislature and connected with the good government of Saskatchewan or the conduct of the public business thereof, or that is in his opinion of sufficient public importance, may appoint one or more commissioners to make such inquiry and to report thereon.

5(1) The commissioners, if thereunto authorized by the Lieutenant Governor in Council, may engage the services of such accountants, engineers, technical advisors or other experts, clerks, reporters and assistants as they may deem necessary or advisable, and also the services of counsel to aid and assist the commissioners in the inquiry."

2 It is deemed advisable and in the public interest that an inquiry be made into the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

The undersigned has the honour, therefore, to recommend that Your Honour's Order do issue pursuant to sections 2 and 5 of *The Public Inquiries Act:*

(a) appointing The Honourable Mr. Justice David Wright as a Commissioner of a Commission of Inquiry into the circumstances that resulted in the death of Neil Stonechild and into the conduct of the investigation into the death of Neil Stonechild, as set out in the terms of reference attached hereto as Schedule A;

(b) establishing the terms of reference of the Commission of Inquiry as set out in Schedule A, attached hereto;

---

[2] O.C. 114/2003

(d) authorizing the Commission to engage:

(i) the services of such experts, clerks, reporters and assistants as the Commission deems necessary or advisable; and,

(ii) the services of counsel to aid and assist the Commission;

to be paid by the Department of Justice as approved by the Minister of Justice and Attorney General;

(e) authorizing reimbursement by the Commissioner by the Department of Justice for reasonable travelling and sustenance expenses incurred by him in the performance of his duties;

(c) directing the said Commission to make its report to the Minister of Justice and Attorney General in accordance with those terms of reference;

(f) authorizing payment by the Department of Justice of expenses incurred in the administration of the Commission of Inquiry."

Terms of Reference

The Terms of Reference for the Commission of Inquiry are appended to the Order-in-Council. The Terms of Reference state:

"TERMS OF REFERENCE

1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the province of Saskatchewan. The Commission shall report its findings and make such recommendations, as it considers advisable.

2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation related to the death of Neil Stonechild or any ongoing criminal or civil proceeding.

3. The Commission shall complete its inquiry and deliver its final report containing its findings, conclusions and recommendations to the Minister of Justice and Attorney General. The report must be in a form appropriate for release to the public, subject to *The Freedom of Information and Protection of Privacy Act* and other laws.

4. The Commission shall have the power to hold public hearings but may, at the discretion of the commissioner, hold some proceedings *in camera*.

5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to

> the Commission to have their legal counsel paid for by the Commission, and, further determine at what rate such Counsel shall be paid for their services."

Minister's Press Release

On February 20, 2003, Justice Minister Eric Cline, Q.C. announced the Commission of Inquiry through a press release. The press release stated:

> "February 20, 2003
>
> Justice - 092
>
> INQUIRY CALLED INTO DEATH OF NEIL STONECHILD
>
> Justice Minister Eric Cline, Q.C., today announced the appointment of the Honourable Mr. Justice David Wright of the Court of Queen's Bench to conduct an inquiry into the death of Neil Stonechild.
>
> 'The head office of the Public Prosecutions Division reviewed the RCMP investigation into the death of Neil Stonechild and determined that there is not sufficient evidence to lay charges,' Cline said. 'There is, however, evidence that Neil Stonechild had contact with members of the Saskatoon Police Service on the day he was last seen alive.'
>
> The appointment was made by Order-in-Council, which also outlines the terms of reference for the inquiry. The inquiry will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild.
>
> Joel Hesje, of Saskatoon, has been designated by the Inquiry Commissioner as Commission Counsel. Hesje indicated that over the next few weeks the Commission will establish the infrastructure and processes required to complete the inquiry.
>
> The Commission will deliver its final report and recommendations to the Minister of Justice."

Standing and Funding Guidelines

Under the Terms of Reference, the Commission was given the power to hold public hearings. It was left to the Commission to decide what parties should have legal representation at the hearings and what amount of funding these parties should receive for legal representation at the hearings. The Commission developed the following Standing and Funding Guidelines to address these issues:

> "STANDING AND FUNDING GUIDELINES
>
> The Terms of Reference provide that the Commission shall have the responsibility to inquire into all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

Part 2 – Creation of the Inquiry

I. PRINCIPLES

Commission counsel has the primary responsibility for representing the public interest at the Inquiry including the responsibility to ensure that all interests that bear on the public interest are brought to the Commission's attention.

1. Parties are granted standing for the purpose of ensuring that particular interests and perspectives, that are considered by the Commission to be essential to its mandate will be presented; these include interests and perspectives that could not be put forward by Commission counsel without harming the appearance of objectivity that will be maintained by Commission counsel and which the Commission believes are essential to the successful conduct of the Inquiry.

2. The aim of the funding is to assist parties granted standing in presenting such interests and perspectives but is not for the purpose of indemnifying interveners from all costs incurred.

II. CRITERIA FOR STANDING

The Commissioner will determine who has standing to participate in Commission proceedings and the extent of such participation. The Commissioner will determine applications for standing based on the following criteria:

a. the applicant is directly and substantially affected by the Inquiry; or

b. the applicant represents interests and perspectives essential to the successful conduct of the Inquiry; or

c. the applicant has special experience or expertise with respect to matters within the Commission's terms of reference.

III. CRITERIA FOR FUNDING

The Terms of Reference provide that the Commissioner shall determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commissioner to have their legal counsel paid for by the Commission, and further, determine at what rate such counsel shall be paid for their services. The Commissioner will determine applications for funding based on the following criteria:

a. the applicant has been granted standing or is a witness whose counsel has been granted standing for the purpose of that witness's testimony;

b. the applicant has an established record of concern for and has demonstrated a commitment to the interest they seek to represent, they are directly or substantially affected by the Inquiry, or they have special experience or expertise with respect to matters within the Commission's terms of reference;

c. the applicant does not have sufficient financial resources to enable them adequately to represent that interest and require funds to do so; and

d. the applicant has a clear proposal as to the use they intend to make of the funds, and appears to be sufficiently well organized to account for the funds.

> IV. APPLICATIONS
>
> Applications for standing shall be made in writing and shall include a statement of how the applicant satisfies the criteria for standing set out in these Guidelines.
>
> 1. Applications for funding shall be made in writing, supported by affidavit, and shall include the following:
>
> a. a statement of how the applicant satisfies the criteria for funding set out in these Guidelines;
>
> b. an explanation as to why an applicant would not be able to participate without funding;
>
> c. a description of the purpose for which the funds are required, how the funds will be disbursed and how they will be accounted for;
>
> d. a statement of the extent to which the applicant will contribute their own funds and personnel to participate in the Inquiry; and
>
> e. the name, address, telephone number and position of the individual who will be responsible for administering the funds and a description of the controls put in place to ensure the funds are disbursed for the purposes of the Inquiry."

Based upon these Guidelines, the following parties applied for and were granted standing at the Inquiry.[3]

Stella Bignell: Mrs. Bignell, the mother of Neil Stonechild, was granted standing in light of her relationship to the deceased and her role as representative of the Stonechild family. She was also granted funding for legal representation. Mrs. Bignell's Counsel at the Inquiry were Donald Worme, Q.C. and Gregory Curtis.

Constable Hartwig and Constable Senger: Constable Hartwig and Constable Senger were granted full standing as they were considered suspects in an earlier investigation of Mr. Stonechild's death by the RCMP. The officers were also granted funding for legal representation. Counsel for Cst. Senger was Jay Watson. Counsel for Cst. Hartwig was Aaron Fox, Q.C.

Federation of Saskatchewan Indian Nations (F.S.I.N.): I concluded that the F.S.I.N. had sufficient interest in this matter to participate as a full party in the Inquiry. The F.S.I.N. was also granted funding for legal representation. The Counsel for the F.S.I.N. was Silas Halyk, Q.C. and Catherine Knox.

Saskatoon Police Service: The Service was given full standing. Funding was not granted. Barry Rossmann, Q.C. was Counsel for the Saskatoon Police Service.

Saskatchewan City Police Association: The Association was given full standing as it represents the interests of the bulk of the Police Service membership. The Association was not granted funding for legal representation. Counsel for the Association was Drew Plaxton.

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[3] The standing and funding rulings are posted on the Inquiry website: ww.stonechildinquiry.ca/parties.shtml and are reproduced in the Report at Appendix "U"

Part 2 – Creation of the Inquiry

Gary Pratt: Mr. Pratt was at one time considered a possible suspect in the death of Neil Stonechild. Mr. Pratt applied for standing part way through the hearings. He was granted full standing. He was also granted funding for legal representation. Mr. Pratt's Counsel was Mark Brayford, Q.C.

Keith Jarvis: Mr. Jarvis was the Investigator in charge of the 1990 Saskatoon Police Service investigation into the death of Neil Stonechild. Mr. Jarvis applied for standing part way through the hearings. He was granted full standing. He was also granted funding for legal representation. Kenneth Stevenson, Q.C. was Counsel for Mr. Jarvis.

Royal Canadian Mounted Police (RCMP): The standing granted to the RCMP was limited to the date it was appointed to investigate the Stonechild matter. Funding was not granted. Counsel for the RCMP was Bruce Gibson.

Jason Roy: Mr. Roy was a friend of Neil Stonechild. Mr. Roy indicated, on several occasions, that he has personal knowledge of Neil Stonechild's involvement with members of the Saskatoon Police Service on the night that Stonechild was last seen alive. He was given standing as a witness. He was also granted funding for legal representation. Darren Winegarden was his Counsel. John Parsons also appeared as Counsel for Mr. Roy on occasion.

Deputy Chief Dan Wiks: Deputy Wiks was a witness who testified on behalf of the Saskatoon Police Service. Wiks was cross-examined on the veracity of comments he made to the press concerning Cst. Hartwig and Cst. Senger. At the conclusion of the evidentiary phase of the hearings, Deputy Wiks applied for standing. Wiks was granted standing to make closing submissions to the Commission in respect of these comments. He was granted funding for legal representation. Richard Danyliuk was Counsel for Deputy Wiks.

Rules of Practice and Procedure

The Commission of Inquiry established the following rules of practice and procedure:

"RULES OF PROCEDURE AND PRACTICE

I. The Terms of Reference provide that the Commission shall have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

II. HEARINGS

Public hearings will be convened in Saskatoon to address issues within the Terms of Reference. Persons or groups granted standing are referred to in these Rules as parties. The term 'party' is used to convey the grant of standing and is not intended to convey notions of an adversarial proceeding.

1. The Commissioner may amend or dispense with these Rules as he sees fit to ensure fairness.

2. All parties and their counsel shall adhere to these Rules, and non-compliance with the Rules may result in loss of standing or such other sanction as the Commissioner may determine as appropriate.
3. Any party may raise any issue of non-compliance with these Rules with the Commissioner.
4. The Commission is committed to a process of public hearings. However, the Terms of Reference provides that the Commission may, at the discretion of the Commissioner hold some proceedings in camera. Any party or witness wishing to have any portion of the proceedings in camera, shall apply in writing at the earliest possible opportunity pursuant to the provisions of paragraph 32 below.
5. Counsel for parties and counsel representing witnesses called to testify before the Commission may participate during the hearing of such evidence as provided in these Rules.

III. EVIDENCE

i. General

In the ordinary course Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a party may apply to the Commissioner to lead a particular witness's evidence in-chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness.

1. The Commission is entitled to receive any relevant evidence that might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
2. Parties shall provide to Commission counsel the names and addresses of all witnesses they feel ought to be heard, and shall provide to Commission counsel copies of all relevant documentation, including statements of anticipated evidence, at the earliest opportunity.
3. Commission counsel have a discretion to refuse to call or present evidence.
4. When Commission counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witnesses is needed, Commission counsel shall call the witness, subject to Rule 8.

ii. Witnesses

Anyone interviewed by or on behalf of Commission counsel is entitled, but not required, to have one personal counsel present for the interview to represent his or her interests. If a person is employed or holds office with someone who holds standing as a party, Commission counsel will interview that person only after informing counsel for the party, unless the witness says they have independent counsel or instructs Commission counsel that they do not wish counsel for the party to be present or notified.

  1. If a witness has held prior employment with one or more of the parties, Commission counsel will tell the witness that they are free to have the benefit of counsel for that party, but Commission counsel will proceed with the interview if the witness indicates that they do not wish counsel for the party by whom they were employed to be notified or be present during the interview.
  2. Witnesses will give their evidence at a hearing under oath or affirmation.
  3. Witnesses may require that the Commission hear evidence pursuant to a subpoena in which case a subpoena shall be issued.
  4. Witnesses who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony to make any objection thought appropriate.
  5. Witnesses may be called more than once.
  6. Before a person gives evidence to the Inquiry, such person shall be advised that he or she has the protection of section 37 of the Saskatchewan Evidence Act and section 5 of the Canada Evidence Act.

iii. Order of Examination

  1. The order of examination will be as follows:
     a. Commission counsel will adduce the evidence from the witnesses. Except as otherwise directed by the Commissioner, Commission counsel are entitled to adduce evidence by way of both leading and non-leading questions;
     b. parties granted standing to do so will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination will be determined by the parties having standing and if they are unable to reach agreement, by the Commissioner;
     c. counsel for a witness, regardless of whether or not counsel is also representing a party, will examine last, unless he or she has adduced the evidence of that witness in-chief, in which case there will be a right to re-examine the witness; and
     d. Commission counsel will have the right to re-examine.
  2. Except with the permission of the Commissioner, no counsel other than Commission counsel may speak to a witness about the evidence that he or she has given until the evidence of such witness is complete. Commission counsel may not speak to any witness about his or her evidence while the witness is being cross-examined by other counsel.

iv. Access to Evidence

1. All evidence shall be categorized and marked P for public sittings and, if necessary, C for sittings in camera.
2. Electronic copies of the P transcript of evidence will be provided to parties by the court reporter. Hard copies of the transcript may be ordered by anyone prepared to pay the cost. One copy of the P transcript and the P exhibits of the public hearings will be made available for public review.
3. Another copy of the P transcript of the public hearings and a copy of P exhibits will be available to be shared by the media.
4. Only those persons authorized by the Commission in writing shall have access to C transcripts and exhibits.

v. Documents

1. All relevant documents, including statements of anticipated evidence, are to be produced to the Commission counsel by any party with standing at the earliest opportunity.
2. Originals of relevant documents are to be provided to Commission counsel upon request.
3. Counsel to parties and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon giving an undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, that its disclosure will be further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record. The Commissioner may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information, or authorize the disclosure of documents or information to any other person.
4. Counsel to parties and witnesses will as soon as reasonably possible after disclosure of documents or information to their clients, or other persons as authorized by the Commissioner, provide to the Commission a copy of the undertaking of such person, together with a list of the documents or information disclosed.
5. Documents received from a party, or any other organization or individual, shall be treated as confidential by the Commission unless and until they are made part of the public record or the Commissioner otherwise declares. This does not preclude the Commission from producing a document to a

proposed witness prior to the witness giving his or her testimony, as part of the investigation being conducted, or pursuant to Rule 26.

6. Subject to Rule 30 and to the greatest extent possible, Commission counsel will endeavor to provide in advance to both the witness and the parties with standing relating to issues with respect to which the witness is expected to testify, documents that will likely be referred to during the course of that witness' testimony and a statement of anticipated evidence.
7. Parties shall, at the earliest opportunity, provide Commission counsel with any documents that they intend to file as exhibits or otherwise refer to during the hearings, and in any event shall provide such documents no later than the day before the document will be referred to or filed.
8. A party who believes that Commission counsel has not provided copies of relevant documents must bring this to the attention of Commission counsel at the earliest opportunity. The object of this rule is to prevent witnesses from being surprised with a relevant document that they have not had an opportunity to examine prior to their testimony. If Commission counsel decides the document is not relevant, it shall not be produced as a relevant document. This does not preclude the document from being used in cross-examination by any of the parties. Before such a document may be used for the purposes of cross examination, a copy must be made available to all parties by counsel intending to use it not later than the day prior to the testimony of that witness, subject to the discretion of the Commissioner.

vi. Confidentiality

1. If the proceedings are televised, applications may be made for an order that the evidence of a witness not be televised or broadcast.
2. Any witness may apply to the Commissioner to be granted "Confidentiality" which shall be at the discretion of the Commissioner, and on such terms as the Commissioner shall determine. For the purposes of the Inquiry, Confidentiality shall include the right to have the witness's identity disclosed only by way of non-identifying initials, and, if the witness so wishes, the right to testify before the Commission in private. Subject to the discretion of the Commissioner, only the Commissioner, Commission staff and counsel, counsel for parties with standing, and counsel for the witness who has been granted Confidentiality may be present during testimony being heard in private. With leave of the Commissioner, media representatives may be present during testimony being heard in private.
3. A witness who is granted Confidentiality will not be identified in the public records and transcripts of the hearing except by non-identifying initials. Any reports of the Commission using the evidence of witnesses who have been granted Confidentiality will use non-identifying initials only.
4. Media reports relating to the evidence of a witness granted Confidentiality shall avoid references that might reveal the identity of the witness. No

photographic or other reproduction of the witness shall be made either during the witness' testimony or upon his or her entering and leaving the site of the Inquiry.

5. Any witness who is granted Confidentiality will reveal his or her name to the Commission and, subject to the discretion of the Commissioner, to counsel participating in the Inquiry in order that counsel can prepare to question the witness. The Commission and counsel shall maintain confidentiality of the names revealed to them. No such information shall be used for any other purpose either during or after the completion of the Commission's mandate.
6. Any witness who is granted Confidentiality may either swear an oath or affirm to tell the truth using the non-identifying initials given for the purpose of the witness's testimony.
7. All parties, their counsel, and media representatives shall be deemed to undertake to adhere to the rules respecting Confidentiality. A breach of these rules by a party, counsel to a party or a media representative shall be dealt with by the Commissioner, as he sees fit."

The Objectives of a Commission of Inquiry and the Standard Applicable to Inquiries

The Objectives of a Commission of Inquiry

It is appropriate that I reiterate the comments I made at the opening of the Inquiry hearings. It is essential that the proceedings of an Inquiry be as fair and balanced as possible, mindful of the interests of the parties. It is also essential that the public have as much information about the proceedings as possible, commensurate with the proper conduct of the hearings and the interests of the parties involved. The role of the media is important. In matters of this sort there must be transparency and accountability.

It is helpful to review the comments made by the Ontario Court of Appeal in *Re The Children's Aid Society of the County of York*.[4] I refer particularly to the following quotations. Firstly to those of Mr. Justice Mulock who said:

> "...in answering the questions submitted it might be advisable to point out the nature of the inquiry in question. It is one to bring to light evidence or information touching matters referred to the Commissioner...where useful documents or other evidence could be obtained, it would seem reasonable that he avail himself of such a source of information... It is for the Commissioner, from all available sources, to bring to light such evidence as may have a bearing on the matters referred to him. ..."[5]

And the comments of Mr. Justice Riddell:

> "... A Royal Commission is not for the purpose of trying a case or a charge against any one, any person or any institution – but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available.
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> ...
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> Everyone able to bring relevant facts before the Commission should be encouraged, should be urged, to do so.
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> **Nor are the strict rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission..."**[6] (Emphasis added)

And finally the comments of Mr. Justice Middleton:

> "... **It is an inquiry not governed by the same rules as are applicable to the trial of an accused person.** The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and in discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exist, may be remedied and misconduct, if misconduct exist, may be put an end to and be punished, not by the Commissioner, but by appropriate proceedings against any offending individual.

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[4] [1934] O.W.N. 418

[5] *Ibid.* at 419

[6] *Ibid.* at 420

> **This is a matter in which the fullest inquiry should be permitted.** All documents should be produced, and all witnesses should be heard, and the fullest right to cross-examine should be permitted. Only in this way can the truth be disclosed. …"[7] (Emphasis added)

The Standard for a Commission of Inquiry

The principle is well established that a Commission of Inquiry may not draw conclusions, or make recommendations regarding the civil or criminal responsibility of any person or organization. This proposition is expressly contained in the Terms of Reference for this Commission of Inquiry, which are reproduced above.

In beginning my analysis of this qualifying language I refer to the comments which appear in the report of the *Commission of Inquiry into the Niagara Regional Police Force*. The Commissioner in that matter made the following observations in the forward to his Report:

> "By my terms of reference, and by judicial precedent, I am prohibited from making any findings of criminal or civil responsibility, and no such finding should be inferred from any of my remarks. Such a prohibition is necessary because a commission may admit evidence not given under oath, and the ordinary rules of evidence which provide protection against such matters as hearsay do not apply to public inquiries. I am interested in improper conduct only if it had some detrimental effect upon the operation or administration of the Force or contributed to a loss of confidence in the Force on the part of the public."[8]

That question has been addressed many times by Canadian courts. Before I proceed further with my Report, it is important that I set down my understanding of the law in this respect.

The question was addressed in the Report of *The Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children and Related Matters*.[9] The Ontario Court of Appeal in *Re Nelles et al. and Grange et al.*[10] had to decide if the Commissioner had exceeded his jurisdiction in expressing an opinion as to whether the death of any child was the result of the action, accidental or otherwise, of any named person or persons. The Commissioner had decided that he was not so constrained and the Ontario Trial Division agreed. The Court of Appeal did not, holding that even without the precise legal requirements of finding that a named person intentionally or accidentally caused the death of another, any such finding would amount to a conclusion of law. The relevant passages of the Court of Appeal's decision are these:

> **"What is important is that a finding or conclusion stated by the commissioner would be considered by the public as a determination and might well be seriously prejudicial if a person named by the commissioner as responsible for the deaths in the circumstances were to face such**

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[7] *Ibid.* at 421

[8] Ontario, *Commission of Inquiry into the Niagara Regional Police Force, Final Report* (Queen's Printer of Ontario, 1993) at xvi

[9] Ontario, The Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children and Related Matters (Ontario Ministry of the Attorney General, 1984)

[10] (1984) 46 O.R. (2d) 210 [*"Nelles"*]

> **accusations in further proceedings.** Of equal importance, if no charge is subsequently laid, a person found responsible by the commissioner would have no recourse to clear his or her name.
>
> ...This case is unique. There was an extensive police investigation and a prosecution that failed. The Attorney-General for the province has clearly stated and it is a fact 'that there is no precedent for an inquiry of this nature into deaths thought to have been the result of deliberate criminal acts.' In our opinion the specific limitation imposed on the commission by the Order in Council in the circumstances was imposed out of concern for those persons who might become involved in other proceedings or be called upon to stand their trial. This concern for fairness is traditionally our way and so what we regard as a clear direction to the commissioner in the Order in Council was struck accordingly and the cases referred to are of little help.
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> ...
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> To be clear, it is our opinions that if there is a finding of non-accidental administration of a lethal overdose of digoxin, thereby causing death, the commissioner is prohibited from naming the person responsible for to do so would amount to stating a conclusion of civil or criminal responsibility. In addition, if the act of administration of a lethal dose of digoxin by a member of the staff of the hospital to a patient was "accidental", naming the person administering it would in the circumstances of this case also amount to a conclusion of civil or criminal responsibility and is prohibited. The commissioner is obliged to hear all of the evidence which tended to show that one or more of them died as a result of unlawful or negligent acts. While the commissioner must not identify an individual as being legally responsible for a death, he should analyze and report upon all of the evidence with respect to the circumstances of each death and if he can, make recommendations with respect to that evidence.
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> It was probably inherent in the terms of the Order in Council that the task of meeting the "need of the parents and the public as a whole to be informed of all available evidence" by "full examination" of the matters to be inquired into and "to ensure full public knowledge of the completeness of the matters referred to", but to do so "without expressing any conclusion of law regarding civil or criminal responsibility", was one of extreme difficulty, at times approaching the impossible. Where such an impasse arises it should be resolved, in our opinion, by a course that best protects the civil rights of the persons the limitation was designed to protect.
>
> The task of the commission is thus a delicate and difficult one, but the limitation imposed by the Order in Council must be obeyed."[11] (Emphasis added)

Thus, in *Nelles* it was held that the particular finding made by the Commissioner was beyond his jurisdiction not because it was a determination of law in a strict sense but rather because the finding would be perceived by the public to be a determination of law.

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[11] *Ibid.* at 220-221

The matter was addressed again in *Canada (Attorney General) v. Canada, Commission of Inquiry on the Blood System.*[12] In that case, the Supreme Court of Canada had to decide if certain misconduct notices issued by the Commission of Inquiry constituted an excess of jurisdiction on the part of the Commission. The contention of the applicants was that the notices contained findings of criminal and/or civil liability. In developing their argument, the applicants claimed a commissioner exceeds his jurisdiction if he makes a finding that would be considered by a reasonably informed member of the public to be a determination of criminal and/or civil liability. They relied on *Nelles.*

Mr. Justice Cory, writing for a unanimous court, stated that while the public perception standard may be appropriate for certain types of Commissions, it is not a rule of universal application. He stated that such a standard would be appropriate when a Commission is investigating a particular crime but would not be appropriate for a commission engaged in a wider investigation, such as an investigation into the contamination of Canada's blood system.

Mr. Justice Cory stated that the purpose behind most Commissions is the restoration of public confidence and that Commissions of Inquiry achieve that purpose by educating the public on why a particular tragedy or social problem occurred and by making recommendations to improve the situation or to prevent a future occurrence. He also held that in order to achieve this general purpose, a Commission must not be unduly restrained. Naming those responsible for the event or situation may be an important element in educating the public. Further, it may be that in order for recommendations to make sense, the whole story, including names, must first be related.[13] Mr. Justice Cory summarized his position by quoting from the Federal Court of Appeals decision on the *Tainted Blood Case:*

> "… a public inquiry into a tragedy would be quite pointless if it did not lead to identification of the causes and players for fear of harming reputations and because of the danger that certain findings of fact might be invoked in civil or criminal proceedings. It is almost inevitable that somewhere along the way, or in a final report, such an inquiry will tarnish reputations and raise questions in the public's mind concerning the responsibility borne by certain individuals. I doubt that it would be possible to meet the need for public inquiries whose aim is to shed light on a particular incident without in some way interfering with the reputations of the individuals involved."[14]

The court held that the narrow public perception test was too restrictive to be universally applicable and, in fact, was only applicable to specific types of Commissions. The court stated that for most Commissions, the broad standard would be applicable. It is also clear from the decision of Mr. Justice Cory, that the purpose or focus of a Commission should not be the determination of individual blame. Rather, the purpose or focus should be on what information is needed to educate the public and to give context in justification to the recommendations. With that principle in mind, he wrote,

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[12] [1997] 3 S.C.R. 440 [*"Tainted Blood Case"*]

[13] *Ibid.* at 463

[14] *Ibid.* at 463

> "Findings of misconduct should not be the principle focus of this kind of public inquiry. Rather, they should only be made in those circumstances where they are required to carry out the mandate of the inquiry."[15]

An example of a Commission which determined that naming names was not needed in order to fulfill the mandate of the Commission is the *Commission of Inquiry into Certain Events at The Prison for Women in Kingston*. In the Commission's Report, Commissioner Louise Arbour wrote:

> "During the entire process of this inquiry, and in particular in the writing of this report, I have concluded that it would not be fair for me to embark upon personal attribution of responsibility, for many reasons. Many persons were not called to testify and had therefore no opportunity to address allegations that might have been made against them. The witnesses who were called were not meant to be singled out as blameworthy, but were called for the sake of expediency, as the ones who had the most to contribute to the unfolding of the narrative. Many individuals who, by their own account, made errors, or whose actions I found did not meet a legal or policy standard or expectation, are otherwise persons greatly committed to correctional ideals for women prisoners. They were part of a prison culture which did not value individual rights. **Attribution of personal blame would suggest personal, rather than systemic shortcomings and justifiably demoralize the staff, while offering neither redress nor hope for a better system in the future.**"[16] (Emphasis added)

Thus, Commissioner Arbour, having concluded that problem at the Kingston prison was systemic, decided that naming names would serve no purpose and would hinder the process of improving that system.

An example of a Commission that determined that it was necessary to name names in order to fulfill its mandate is the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia:*

> "The Governor in Council has made this section of our report necessary by entrusting us with a mandate that specifically obliged us to investigate individual misconduct, in addition to probing policy issues. A section on individual misconduct was also necessary by our being asked to inquire into and report on a great many matters that should, at least in some measure, involve an assessment of individual conduct, including the effectiveness of decisions and actions taken by leaders in relation to a variety of important matter; operational, disciplinary, and administrative problems and the effectiveness of the reporting of and response to these problems; the manner in which the mission was conducted; allegations of cover-up and destruction of evidence; the attitude of all the ranks towards the lawful conduct of operations; and the understanding, interpretation, and application of the rules of engagement."[17]

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[15] *Ibid.* at 470

[16] Canada, *Commission of Inquiry into Certain Events at The Prison for Women in Kingston* (Public Works and Government Services Canada, 1996) at xiii

[17] Canada, *Commission of Inquiry into the Deployment of Canadian Forces to Somalia, Dishonoured Legacy: The Lessons of the Somalia Affair, Final Report, vol. 4* (Canadian Government Publishing, 1997) at 951-952

Commissioners Desbrats and Rutherford held that naming names was necessary to fulfill the Commission's mandate not only because they were directly specified to do so, but also because reporting on individual conduct was an inherent element in many of the issues their mandate directed them to.

In the Supreme Court of Canada case of *Starr v. Houlden*, Mr. Justice Lamer (as he then was) made the following comments:

> "My interpretation of the interplay between provincial inquiries and investigation of specific crimes has more recently been supported by the Ontario Court of Appeal in *Re Nelles* and *Grange, supra*. Although the constitutional validity of the Order in Council was not in issue, **the interpretive limitations which were imposed by the court were designed to ensure that it stayed within the provincial jurisdiction**..."[18] (Emphasis added)

Starr supports the position that the public perception test is applicable when a Commission will be focusing its investigation on particular crimes of particular individuals. Mr. Justice Lamer made it clear that this interpretive limitation was in place because the unique nature of the inquiry.[19] Indeed, the Court in *Nelles* stated as much when they wrote, "This case is unique. There was an extensive police investigation and a prosecution that failed. The Attorney-General for the province had clearly stated that if further evidence should be found there will be further prosecutions."[20]

While the inquiry in *Nelles* may have had the provincial purpose of ensuring public confidence in the administration of hospitals, the court had determined that its focus was directed at a particular crime of a particular person. Thus, to name that person would be a pure declaration of guilt, and as Mr. Justice Lamer stated would be an entrenchment on federal jurisdiction over criminal liability. Persons named would lack the protections accorded an accused in a criminal trial. In the *Tainted Blood Case*, Mr. Justice Cory recognized that Public Inquiries cannot overshadow individuals' rights, when he wrote:

> "The inquiry's roles of investigation and education of the public are of great importance. Yet those roles should not be fulfilled at the expense of the denial of the rights of those being investigated. The need for the careful balancing was recognized by Decary J.A. when he stated at para. 32 '[t]he search for truth does not excuse the violation of the rights of the individuals being investigated'. This means that no matter how important the work of an inquiry may be, it cannot be achieved at the expense of the fundamental right of each citizen to be treated fairly.[21]

I would observe also that while rebutting the applicants' view of *Nelles*, Mr. Justice Cory in the *Tainted Blood Case* outlined the factors to be considered when determining whether a Commission is of narrow or broad scope. The main factor to be considered is the nature of the Commission's purpose. Is the Commission invested with a broad purpose, such as an investigation into the contamination of Canada's blood system? Or is the Commission's purpose narrow, such as the determination of who committed the specific crime of killing several babies? However, he noted that a Commissioner may appear to have a narrow purpose when, in actuality, the purpose is broad. Mr. Justice Cory further illustrated this point by citing the case of *O'Hara v. British Columbia*[22] when he wrote:

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[18] [1990] 1 S.C.R. 1366 [*"Starr"*]

[19] *Ibid.* at 1402

[20] *Nelles, supra* note 9 at 220

[21] *Tainted Blood Case, supra* note 11 at 458

> "In *O'Hara, supra*, an inquiry was upheld in circumstances where the commissioner was to report on whether a prisoner sustained injuries while detained in police custody, and if so, the extent of the injuries, the person or persons who inflicted them, and the reasons they were inflicted. The court made a distinction between inquires aimed at answering broad policy questions and those with a predominantly criminal law purpose. **The inquiry was upheld, despite the fact that it would inevitably lead to findings of misconduct against particular individuals, because it was not aimed at investigating a specific crime, but rather at the broad goal of ensuring the proper treatment by police officers of persons in custody.**"[23] (Emphasis added)

It is clear from the above that a Commission may have as its investigative focus the possible criminal conduct of particular individuals during a specific event without being restrained by the public perception test. However, in order for the public perception test not to be applicable, the Commission's overall purpose must be broad in nature, such as the proper treatment by police officers of persons in custody.

The *Tainted Blood Case* decision also established that the circumstances surrounding an Inquiry can be a factor in determining whether a Commission is broad or narrow in scope. This factor includes background facts leading up to the Inquiry. It would seem the purpose of this factor is twofold. First, it is intended to aid in the determination of the Inquiry's true purpose. Second, it is intended to aid in determining what purpose the public will attribute to the Inquiry. Mr. Justice Cory articulated this factor, while he was in the process of distinguishing *Nelles* and *Starr*, when he wrote:

> "The decision in *Nelles* and *Starr* are distinguishable from the case at bar. In *Nelles*, the court found that the purpose of the inquiry was to discover who had committed the specific crime of killing several babies at the Hospital for Sick Children in Toronto. By the time the case reached the Court of Appeal, one criminal prosecution for the deaths had failed and an extensive police investigation into the deaths was still continuing. When it established the commission, the government described it as an inquiry into deaths thought to have been the result of deliberate criminal acts. Further, the Attorney General had stated that if further evidence became available which would warrant the laying of additional charges, they would be laid and the parties vigorously prosecuted. The court clearly viewed the proceeding as tantamount to a preliminary inquiry into a specific crime. For the commissioner to have named the persons he considered responsible would, in those circumstances, have amounted to a clear attribution of criminal responsibility.
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> ...
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> Clearly, those two inquiries were unique. They dealt with specific incidents and individuals, during the course of criminal investigation. Their findings would

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[22] [1987] 2 S.C.R. 591 ["*O'Hara*"]

[23] *Tainted Blood Case, supra* note 11 at 468

> inevitably reflect adversely on individuals or parties and could well be interpreted as findings of liability by some members of the public. **In those circumstances, it was appropriate to adopt a strict test to protect those who might be the subject of criminal investigation.**"[24] (Emphasis added)

Circumstances surrounding an Inquiry are not the determinative factor in deciding whether a Commission is broad or narrow. However, in the above passage, the learned judge articulated that they can aid in uncovering the true nature and scope of a Commission.

The court, after determining that there were differing standards applicable to broad based commissions as opposed to narrow based commissions, then went on to describe the standard applicable to broad commissions. In particular it stated that a Commissioner invested with a broad mandate should not be overly concerned with whether the public would view his findings as indicative of legal liability. Rather, the Commissioner should only be concerned that his or her findings and conclusions are, to the greatest extent possible, free of legal terminology and words with inherent legal meaning. In laying out the broad test applicable to commissions with wide mandate, Mr. Justice Cory stated the following:

> "...However, the conclusions of a commissioner should not duplicate the wording of the *Code* defining of a specific offence. If this were done it could be taken that a commissioner was finding a person guilty of a crime. This might well indicate that the commission was, in reality, a criminal investigation carried out under the guise of a commission of inquiry. Similarly, commissioners should endeavor to avoid making evaluations of their findings of fact in terms that are the same as those used by courts to express findings of civil liability. As well, efforts should be made to avoid language that is so equivocal that it appears to be a finding of civil or criminal liability. **Despite these words of caution, however, commissioners should not be expected to perform linguistic contortions to avoid language that might conceivably be interpreted as importing a legal finding.**"[25] (Emphasis added)

Along the same lines, he stated that words contained in a Commission report such as "responsible for" or "failed to" could not be interpreted as determination of legal liability. Such conclusions do not imply a conclusion of law as they could easily be interpreted to be based on any number of normative standards. The point was articulated as follows:

> "Further, while many of the notices come close to alleging all necessary elements of civil liability, none of them appears to exceed the Commissioner's jurisdiction. For example, if his factual findings led him to conclude that the Red Cross and its doctors failed to supervise adequately the Blood Transfusion Service and Blood Donor Recruitment, it would be appropriate and within his mandate to reach that conclusion. Some of the appellants object to the use of the word "failure" in the notices; I do not share their concern. As the Court of Appeal pointed out, there are many different types of normative standards, including moral, scientific and professional-ethical. **To state that a person 'failed' to do something that should have been done does not necessarily mean that the person breached a criminal or civil standard of conduct. The same is true of the**

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[24] *Ibid.* at 466 and 468

[25] *Ibid.* at 469-470

> **word 'responsible'.** (Emphasis added) Unless there is something more to indicate that the recipient of the notice is **legally responsible** (Emphasis in original), there is no reason why this should be presumed. It was noted in *Rocois Construction Inc. v. Quebec Ready Mix Inc.*, [1990] 2 S.C.R. 440, at p. 455:
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> > A fact taken by itself apart from any notion of legal obligations has no meaning in itself and cannot because; it only becomes a legal fact when it is characterized in accordance with some rule of law. The same body of facts may well be characterized in a number of ways and give rise to completely separate causes...[I]t is by the intellectual exercise of characterization, of the linking of the fact and law, that the cause is revealed.
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> While the Court in *Rocois* was concerned only with facts, I believe the same principle can be applied to conclusions of fault based on standard of conduct. Unless there is something to show that the standard applied is a legal one, no conclusion of law can be said to have been reached."[26]

However, the judgment reiterated the caution that a Commissioner should avoid words with inherent legal implications. In developing this point, Mr. Justice Cory stated that certain terms or phrases denote the application of a legal standard and, therefore, do impute a conclusion of law:

> "**There are phrases which, if used, might indicate a legal standard has been applied such as a finding that someone 'breached a duty of care', engaged in a 'conspiracy', or was guilty of 'criminal negligence'.** (Emphasis added) None of these words has been used by the Commissioner. The potential findings as set out in the notices may **imply** (Emphasis in original) civil liability, but the Commissioner has stated that he will not make a finding of legal liability, and I am sure he will not."[27]

Having examined the law at some length, I am satisfied that the findings set out hereafter fall within the ambit described by the Supreme Court of Canada. These injunctions have been before me constantly as I proceeded with the preparation of the Report and the summary of my findings.

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[26] *Ibid.* at 475-476

[27] *Ibid.* at 476

The Evidence

In this Part of the Report, I review the evidence presented to the Inquiry over the 43 days of hearings. The evidence included the testimony of 63 witnesses and 197 exhibits. In all, the transcript of the evidence occupies 8,506 pages.[28]

I have not included the testimony of all the witnesses—that was not necessary. That is not to say that any witness was unimportant. Each had information to give about what he or she knew as to the Stonechild matter. I am grateful to them all for their willingness to attend and testify, sometimes after several hours—or days—of waiting.

Every witness cooperated fully. It was never necessary to admonish a witness or instruct a witness to answer a question posed to him or her. For many who appeared, testifying was a difficult and even intimidating experience.

I believe I have "the whole story". If I err in my interpretation or understanding of the evidence, the responsibility is entirely mine. It has been enormously helpful to have all the elements of the Stonechild case before me even though this entailed a very considerable amount of time and study for me. At the end, I consider it all worthwhile.

After several reviews of the evidence, I concluded it would be best organized by grouping the various witnesses who attended. Admittedly, the grouping is somewhat arbitrary. It should, I believe, permit the reader to follow the testimony in a more orderly fashion.

The first section of my review involves an examination of the evidence of the family of Neil Stonechild. Section 2 of this Part is a review of the testimony of the acquaintances of Stonechild and other civilian witnesses who could offer testimony regarding the circumstances surrounding the death of Neil Stonechild and the events that followed the discovery of his body.

Sections 3 through 6 are directed to a review of the evidence of the Saskatoon Police Service, including past and present members of the Service who testified. Section 3 provides a brief summary of the history and organization of the Saskatoon Police Service. This background is intended to assist the reader in understanding the evidence of the many police witnesses who testified. Section 4 summarizes the evidence of the officers who were dispatched to deal with Neil Stonechild on the night he was last seen alive. In Section 5, I survey the evidence of police witnesses who were involved directly or indirectly with the Saskatoon Police Service investigation into the death of Neil Stonechild. Section 5 also includes a summary of the evidence of police witnesses who were in the Saskatoon Police Service chain of command in 1990. Section 6 reviews the actions of the Saskatoon Police Service when questions surrounding the suspicious death of Neil Stonechild resurfaced in 2000. It also details the relevant policy and organizational changes that have occurred in the Saskatoon Police Service since 1990.

In Section 7, I have summarized the testimony of Chief Superintendent Darrell McFadyen of the Royal Canadian Mounted Police. McFadyen headed the RCMP investigation into the death of Neil Stonechild that began in early 2000.

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[28] The 43 volumes of transcripts are posted on the Inquiry website: www.stonechildinquiry.ca. A list of the Inquiry exhibits is also contained on this site and is reproduced in this Report as Appendix "H".

Part 4 – The Evidence

Sections 8 through 10 of this Part address the expert testimony presented to the Inquiry. Section 8 is a review of the evidence of the medical experts. Section 9 examines the photogrammetric evidence that was tendered. Section 10 surveys the testimony of the expert witnesses called to explain memory formation and recall.

1 | The Stonechild Family

I begin with the evidence of the following members of Neil Stonechild's family: Stella Bignell, Debra Mason, Jerry Mason, Marcel Stonechild, and Erica Stonechild. Bruce Genaille, a cousin of Stonechild, also testified. His evidence is discussed in a later section. The focus of these summaries is generally restricted to the witnesses' recollection of events relating to the disappearance of Neil Stonechild and events following the discovery of his body.

In November of 1990, Neil Christopher Stonechild was a 17 year old boy of Saulteaux background living in Saskatoon, Saskatchewan; a city of approximately 183,000 souls. Neil Stonechild came to Saskatoon from Thompson, Manitoba in 1980 with his mother Stella Bignell, his older sister Erica Stonechild, his older brother Marcel Stonechild, and his younger brother Jason Stonechild.

The testimony of Stonechild's family consistently portrayed him as a friendly, outgoing, and caring young man. A good deal of this well-liked boy's youth was spent in positive activities and pursuits such as wrestling, baseball, and army cadets. Unfortunately, around the age of 15, Neil Stonechild also began to engage in negative and criminal pursuits. Notwithstanding these problems, Stonechild's future was by no means bleak. He was surrounded by a network of supportive family members and youth workers and counselors.

Stella Bignell (Stonechild)[29]

Stella Stonechild was living in Brandon, Manitoba when her son was born in 1973. She had five children. The names of her children in order of age are Dean, Erica, Marcel, Neil, and Jason. The eldest, Dean, was given up for adoption at a young age. Mrs. Bignell was a single parent. She moved to Saskatoon in 1980 to make a new life for herself and to escape problems with alcohol abuse.

Mrs. Bignell is now a quiet, dignified grandmother. She gave her evidence in a calm and forthright manner. She described her late son as a loveable boy who enjoyed sports and excelled in wrestling. He was also an Army Cadet. She acknowledged that he came into conflict with the law when he was fourteen or fifteen years old. He also began to abuse alcohol. He had a juvenile record which centered mainly around the commission of breaking and entering offences. He was not involved in any serious or violent crime.

The members of the Stonechild family constituted a close and caring group. The children respected their mother's insistence that if they left the family home in the evening they had to keep her informed as to their whereabouts. Mrs. Bignell did not appear to have had any discipline problems with Neil. I conclude she tolerated his petty criminal behavior while trying to encourage him to concentrate on school and his other interests. He was obviously a much loved son.

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[29] Evidence of Stella Bignell (Stonechild), Inquiry transcript, vol. 1 (September 8, 2003): 14

On Saturday, November 24th, 1990, he was living with his mother in Saskatoon. On that date, he was absent without permission from a community home in Saskatoon where he had been placed because of his criminal activity. On that day, he promised his mother and the community home manager, whom he phoned that evening, he would return to the community home after the weekend.[30]

Stella Bignell last saw her son early that evening. He advised her then that he was going to visit some friends, the Binnings, who lived not far away. Neil told her that he could not phone her from the Binnings as they did not have a phone. A Binning family member testified during the Inquiry that the family did have a phone, but there is no evidence that Neil knew that. Neil did not return home. On Sunday evening, November 25th, Mrs. Bignell began to worry. She asked her adult son, Marcel, to start looking for Neil. Marcel was told by Eddie Rushton, a Binning friend, that Neil and his friend, Jason Roy, had gone out during the evening but that only Roy had returned to the Binning residence.[31] Jason Roy had reported to the Binnings that Neil had been picked up by the Saskatoon Police Service on the night of November 24/25. She concluded that he was in custody, an event consistent with her son having being unlawfully at large and susceptible to arrest. When the family called the Saskatoon Police Service on Monday to inquire, they were advised that Neil was not in custody.[32] There had been a suggestion made by Neil earlier that he might go with a friend to visit a nearby reserve, and she concluded that that was probably what had happened.

On Thursday, November 29th, she was informed that the frozen body of her son had been found in a remote area on the outskirts of northwest Saskatoon. This information was provided to her by Sgt. Keith Jarvis, a Morality Officer with the Saskatoon Police Service. Jarvis would feature prominently in the investigation into her son's death and later events surrounding the death.

Mrs. Bignell attended Neil's funeral with other family members and friends. She observed at that time that he had a gash on his nose.

After the funeral, Mrs. Bignell tried to recover her son's clothing and personal property from the Saskatoon Police Service. She was refused, then and later. Some years after these requests, the Saskatoon Police Service destroyed Neil Stonechild's belongings without notifying her.

Shortly after the death, the Saskatoon Police Service questioned Mrs. Bignell, but she was not able to recall what was said in that conversation. She learned that the investigators had a theory that her son was walking in the northwest area of the city in an effort to reach the Saskatoon Correctional Centre, located in that area, to turn himself in. She rejected this theory. As she and others subsequently pointed out, this suggestion made no sense, whatsoever. Neil was a youthful offender and would not have been accepted at an adult prison facility. Her son was familiar with the juvenile justice system and knew that he would, if arrested, simply be returned to his community home or a juvenile facility in Saskatoon. He had told his mother of his intention to return to the community home, as I have observed earlier.

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[30] See also Evidence of Pat Pickard, Inquiry transcript, vol. 2 (September 9, 2003): 172, and Evidence of Debra Mason, Inquiry transcript, vol. 1 (September 8, 2003): 113

[31] Evidence of Stella Bignell, Inquiry transcript, vol. 1 (September 8, 2003): 21; Evidence of Marcel Stonechild, Inquiry transcript, vol. 2 (September 9, 2003): 285

[32] Marcel Stonechild also testified that he called the Saskatoon Police Service to enquire if Neil Stonechild was in custody: Evidence of Marcel Stonechild, Inquiry transcript, vol. 2 (September 9, 2003): 286

Part 4 – The Evidence

Two members of the Saskatoon Police Service tried to assist the Stonechild family in obtaining answers to their questions about Neil's death. They were Sgt. Eli Tarasoff, now retired and Cst. Ernie Louttit, presently a Senior Constable with the Service. I will have more to say about their efforts when I review their evidence.

In March 1991, Stella Bignell spoke with a reporter from the Saskatoon StarPhoenix, a daily newspaper published in the City of Saskatoon, about her concern that her son's death was not being adequately investigated and that the investigation into her son's death had been concluded. She decided that she would not pursue the matter as she did not believe the police would do anything about Neil's death. She also confirmed that she had heard rumours that Neil might have been beaten up by a member of the Pratt family as a result of her son's involvement with the Pratts in September 1990 in a gun transaction. She expected the Saskatoon Police Service would look into this report also as it was widely circulated in the community. Gary Pratt visited her and told her the report was untrue, and she accepted his explanation.

Jason Roy did not talk to Mrs. Bignell about his involvement with her son until much later. When he contacted her in 1991, he told her he had seen Neil in the back of a police car on the evening of November 24/25, 1990, and that he, Roy, was not arrested by the police at that time because he gave the police a false name. Roy told her that he had reported his observations to the police. She concluded that that would be sufficient. She expected the police to come and see her.

Mrs. Bignell described her son in these moving words:

> "Q. Stella, we – we've heard your son described in the media and by others as an Aboriginal man or a man. How does that make you feel?
>
> A. He isn't a man. He was a boy. He was only 17. He never – he never had a chance to become a man. They never gave him that chance to become a man and have a family of his own, to give me the grandchildren that I would have loved like my other children."[33]

Mrs. Bignell did not receive any encouragement from any source in respect to her son's untimely and suspicious death until her interview by the Saskatoon StarPhoenix in March 1991. Despite this media attention, the death of her son was not investigated any further until 2000.

In early 2000, two Aboriginal men were found frozen to death in the south industrial area of Saskatoon. On the heels of these deaths came an allegation by Darrell Night that he had been taken to the outskirts of Saskatoon and dropped off by members of the Saskatoon Police Service. As a result of these circumstances, the Saskatchewan Minister of Justice asked the RCMP in February of 2000 to conduct an independent investigation of freezing deaths of the two Aboriginal men and the allegations of Darrell Night.[34] In late February of 2000, the suspicious circumstances surrounding the death of Neil Stonechild were again raised in the press. Shortly thereafter, the RCMP added to its mandate the investigation into the death of Neil Stonechild.

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[33] Evidence of Stella Bignell, Inquiry transcript, vol. 1 (September 8, 2003): 107

[34] Evidence of Chief Superintendent Darrell McFayden, Inquiry transcript, vol. 32 (January 7, 2004): 6072-6074

As matters unfolded, more evidence came forward indicating that her son's death may have been caused by circumstances other than those initially suggested to her.

Stella Bignell attended all of the sessions of the Inquiry and followed closely the evidence of each of the witnesses. Her husband, Norman, supported her fully throughout the Inquiry. There were occasions when the evidence was so graphic or disturbing that she was reduced to tears. I admire her courage and her fortitude in light of what must have been a traumatic and painful experience. Her suffering was prolonged as well. I say prolonged, because the Inquiry continued over a period of many months as a result of the difficulty of scheduling counsel and witnesses.

To the end, she had a deep affection for her son and an abiding conviction that his death had been caused by a person or persons never identified and certainly never brought to an accounting for their actions.

Debra Mason[35]

Debra Mason is Neil's aunt. She confirmed Stella's description of Neil as a loving person and an individual who was particularly fond of children. She also underscored the cohesive and supportive nature of the Stonechild family. She observed injuries on her nephew's face at his funeral.

Ms. Mason was present when Neil Stonechild left his mother's house for the last time on November 24, 1990. She testified that she, Neil, and Stella Bignell had a conversation in the kitchen of the Bignell residence before Neil left. She recalled Neil stating that he was tired of being on the run, and that he was finally going to turn his life around. Ms. Mason remembered that Neil told them he wanted to return to school and to wrestling. The conversation ended when Neil informed them that he was going to a party at a friend's house. Ms. Mason testified that Stella Bignell encouraged Neil to stay indoors as it was very cold. Neil assured them that he would be fine. As he left, he gave them both a hug and told them he would see them tomorrow. Debra Mason did not see him alive again.

Jerry Mason[36]

Jerry Mason is Debra Mason's husband. He accompanied Mrs. Bignell to the Saskatoon Police Station to try to recover Neil's clothing and belongings. There were several unsuccessful attempts. He saw a gash on Neil's face at the funeral and observed marks on Neil's wrists.

Marcel Stonechild[37]

Marcel Stonechild was Neil's older brother. He also played a paternal role vis-à-vis his sibling. His evidence is significant on a number of counts. He confirmed his mother's description of his younger brother and his close relationship with the latter. Marcel and Neil were living with their mother in Saskatoon's west end on November 24th, 1990. On that evening, Marcel agreed to buy Neil a bottle of vodka, which Neil and his friend, Jason Roy, intended to take to a party at the Binnings' residence. Neil explained that this was to be his last outing before he returned to the community home.

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[35] Evidence of Debra Mason, Inquiry transcript, vol. 1 (September 8, 2003): 108-136

[36] Evidence of Jerry Mason, Inquiry transcript, vol. 1 (September 8, 2003): 136-159

[37] Evidence of Marcel Stonechild, Inquiry transcript, vol. 2 (September 9, 2003): 274-347

Marcel saw the two young men off. The weather was very cold, and it was snowing. He was concerned for his brother, and later that evening he went to the Binning residence to see if Neil was alright. He was told at that point that Neil and Jason had left the Binning residence, and that they might be contemplating the commission of a breaking and entering offence, apparently to raise money to buy more alcohol. Marcel returned to his mother's home. He was not greatly concerned as he had instructed Neil to keep in touch by telephone.

When Neil did not return home or phone, Marcel went again to the Binning residence. He was told by the Binnings' friend, Eddie Rushton, that the young Stonechild had never returned to their home. Rushton subsequently told Marcel that Neil had been arrested, and that Jason Roy had seen Neil in the back of a police car. Rushton is now deceased. Marcel assumed that his brother was in police custody, and perhaps the "drunk tank".

When he called the police station he was told that Neil was not in custody. He then, like his mother, became greatly concerned.

Marcel Stonechild was at his mother's house when the police arrived on November 29, 1990, to inform her that Neil's body had been found. Marcel Stonechild eloquently expressed the enormous guilt and depression that he suffered in the years that followed Neil's death; feelings he experienced as a consequence of having purchased the 40 ounce bottle of Vodka for his brother and his friend on the evening of November 24th. He felt, and feels, that he contributed to Neil's death.

Marcel attended Neil's funeral. He also noticed two parallel gashes on Neil's nose and marks on his wrists. He also observed scrapes and a bruise on the face of the deceased. Marcel contacted a family friend, Ernie Louttit, a member of the Saskatoon Police Service. Cst. Louttit is a First Nations person. Marcel Stonechild shared his concern about his brother with the police officer who then relayed the information he had been given by Marcel to Keith Jarvis. That information related to the possible involvement of the Pratts.

Marcel Stonechild's evidence was consistent with other independent evidence. I am aware of the fact that Marcel counseled his younger brother to testify falsely at a trial involving Pratt and the so called gun transaction some months prior to Neil's death. There were some inconsistencies in his evidence as well. Having said that, I am satisfied with his account of what happened on the evening of November 24th.

Erica Stonechild[38]

Erica Stonechild was Neil's older sister. She attended his funeral and confirmed his injuries. She expressed the disappointment and anger the family experienced when the Saskatoon Police Service took no action as a result of StarPhoenix articles of March 1991 and February 2000 concerning the suspicious circumstances surrounding Neil's death.

Her views about the Saskatoon Police Service are reflected in the comments she made at the Inquiry:

> "A. In general terms. There was no trust established there at all, period. My mother tried to teach us children that under every circumstance that you

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[38] Evidence of Erica Stonechild, Inquiry transcript, vol. 9 (September 22, 2003): 1599-1652

> need help, call the police. That's their job, that's what they're there for. When you have conflict with that, what you've been taught all your life, but you're experiencing a whole lot of other things that suggest otherwise, then I'm sorry – there was a few incidences in my personal life and our entire family's. And I'm talking – when I say my entire family I'm talking about my mother and my brothers, you know, my uncle, my cousin, whoever happened to be most in our home at the – at that time. They were never reported simply because there is no trust. And it didn't – and it's not going to say that I'm slashing up the Saskatoon Police Force because, please, there is a lot of good people out there, I know that there is. But we can't ignore the fact that they're human, everybody's a human being."[39]

2 | Stonechild Acquaintances and Other Civilian Witnesses

The Inquiry heard from a number of friends of Neil Stonechild and other civilian witnesses who offered information regarding the circumstances leading up to his disappearance and the events subsequent to the discovery of his body. Chief among these witnesses is Jason Roy, who was with Stonechild on the night of November 24/25, 1990.

It is helpful to indicate, briefly, what this evidence encompasses. I begin with Patricia Pickard, who operated a community home for young offenders in 1990. At the time of Stonechild's disappearance, he was unlawfully at large from Ms. Pickard's community home. I have also reviewed the evidence of Gary Pratt. Shortly after Stonechild's body was discovered, there were rumours that Pratt may have had something to do with Stonechild's death. I then review the evidence of Jason Roy. This is followed by a summary of the evidence of Tracy Lee Horse, a witness who corroborated portions of Roy's evidence. An examination of the evidence of Lucille Horse, Gary Horse, and Trent Ewart is next. These three individuals testified about a disturbance caused by Neil Stonechild in the late evening hours of November 24, 1990, which led Trent Ewart to call for the police. Thereafter I review the evidence of Cheryl Antoine and Julie Binning; friends who partied with Stonechild and Roy on the night Stonechild disappeared. A summary of the evidence of Bruce Genaille is next. He testified to being stopped by two police officers looking for Stonechild on the night Stonechild disappeared. This is followed by the evidence of Diana Fraser and Brenda Valiaho who became acquainted with Jason Roy around 1990 as a result of their jobs in the youth justice system in 1990. This is followed by a summary of the evidence of Richard Harms who discovered the body of Neil Stonechild on 57th Street. Lastly, I review the evidence of Larry Flysak, an employee of Environment Canada, who provided information about the weather conditions between the day Stonechild was last seen alive and the date his body was found.

Patricia Pickard[40]

Patricia Pickard was an important witness for the Inquiry. She has managed a community home for young offenders for sixteen years. Community homes are funded by Saskatchewan Justice as an alternative to incarceration. Residents live in a family environment and are allowed certain privileges. They are, however, still under the control of the Corrections Branch. Before operating a community home, Ms. Pickard served as a Correction Officer at Kilburn Hall, a closed custody facility for young offenders in Saskatoon.

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[39] Evidence of Erica Stonechild, Inquiry transcript, vol. 9 (September 22, 2003): 1624-1625

[40] Evidence of Patricia Pickard, Inquiry transcript, vol. 1-2 (September 8-9, 2003): 160-274

Ms. Pickard is a strong no-nonsense sort of person. Her business-like manner is balanced, however, by a genuine concern and affection for her young charges. Her evidence dealt with two important areas:

i. her description and assessment of Neil Stonechild;
ii. her telephone conversation with Neil Stonechild on November 24th, 1990.

She described Neil in the following terms:

> "Q. What can you tell us about your observations, your knowledge of Neil?
>
> A. Neil was – he was a really great kid. He was happy most of the time. He had a good sense of humour. He was a tremendously handsome boy, a great personality. Unfortunately, he had a drinking problem. But Neil was one of those kids that just could have done anything, given the fact that, you know, that he would get off the alcohol and – he was a teenager. Basically he was a teenager that was drinking and was out of control, and probably at 25 would have been Joe Citizen."[41]

She emphasized to her charges, whom she referred to as "her boys" the need to phone her if ever they were absent from her home without leave and in difficulty. Neil was told of this caution. She gave this explanation for her advice:

> "Q. Had you talked to "the boys", as you use the term, about what they should do if they did not meet the terms of their staying at your home, that is –
>
> A. Always. Always, always, always. It was one of the things we drilled into them over and over again: if you are in trouble, phone home. You know, don't get any more charges, don't go do something stupid; you know, phone home, we will come and get you. Doesn't matter where you are, we will come and get you and then we will deal with it. And the boys knew the procedure for dealing with that. If you were just having a problem, if you were drunk downtown like Neil was, we went and picked him up, brought him home, we dealt with it internally, which generally meant losing privileges; no weekend passes, whatever other privileges you could think of at the time, maybe some extra work.
>
> If the unlawful at large charge had already been laid, then the procedure was, phone home, we will pick you up; I will take you to the City Police Station where the charges will be formally filed; you will be released back into my custody, and then they would just wait for their court date, go to court, and whatever the judge decided, whether they got a couple extra weeks added on, or maybe they didn't get anything. But they knew that the way to do it was, you come home, and I will take you to the police station."[42]

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[41] Evidence of Patricia Pickard, Inquiry transcript, vol. 1 (September 8, 2003): 163

[42] Evidence of Patricia Pickard, Inquiry transcript, vol. 1 (September 8, 2003): 167-168

In November 1990, as I previously noted, Neil Stonechild was unlawfully at large. He had been granted a temporary absence in that month but had not returned to the Pickard home when it expired. Ms. Pickard called Mrs. Bignell who promised to speak to Neil.

On November 24th, Neil called Ms. Pickard in the evening. They had a long conversation. She described the conversation as follows:

> "A. On the Saturday night that he disappeared, he'd been away from our place, I don't know, maybe a week or a little better. He called me on Saturday night, it was around 7:30, and we talked for probably half an hour or more. He phoned to tell me that he would like to turn himself in to me, and we spent the biggest part of the half hour me [sic] explaining to him, "You should do it tonight; like, now is a good time." His response to that was, "I can't go down to the police station tonight because I've already been drinking." He was not drunk like falling down. He probably had been drinking, but he was very coherent. "I can't come in tonight because then I have to go to the police station, and I've been drinking and da-da-da-da." And we talked for quite a long time about, "Yes, but, Neil, if you don't come in and you go drinking, you know, this could happen, this could happen." Basically that was the gist of the conversation.
>
> He told me, "I promised my mother that I would turn myself in to you tomorrow, Sunday, and I want you to come and pick me up at mom's. I'll phone you when I get up around noon and you pick me up and then we'll go to the police station tomorrow." And we tried – I tried and tried to convince him to maybe do it that night instead, but he was already sort of in a party mode I guess, and he said, "No, but I promised my mom." And if Neil promised his mom, there was no doubt in my mind that he absolutely meant to come home the next day.
>
> Q. Did you receive a call from him the next day?
>
> A. No."[43]

She learned of his death on November 29th. Pickard rejected categorically the suggestion that her young charge was walking to the Saskatoon Correctional Centre when he was found at 57th Street. Her words are worth repeating:

> "Q. You didn't believe that explanation?
>
> A. Not then, not now, not ever.
>
> Q. And can you explain again why?
>
> A. Well, basically for some of the reasons I've given you. Number one, he was a young offender. Young offenders know the law, believe it or not, better than most people who are dealing with them. He would have never turned himself in at Corrections, because Corrections wouldn't have accepted him, he wasn't an adult, and Correctional officers are, per se, police. He would not have turned himself in to Corrections. He would have come home. He

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[43] Evidence of Patricia Pickard, Inquiry transcript, vol. 1 (September 8, 2003): 172-173

> knew what the procedure was. He knew that he wouldn't spend a day in jail if he actually turned himself in at home, we went down and laid the charges, he comes home, waits for court. Like, they knew that."[44]

She testified that when asked by an officer from the Saskatoon Police Service shortly after Stonechild's death whether there was anyone who may have wanted to harm Stonechild, she responded with the name Gary Pratt. Ms. Pickard recalled that some months before Stonechild's death, he was subpoenaed to testify against Gary Pratt, and that he was very scared to do so. Ms. Pickard and her husband were required to transport Stonechild to the courthouse, but he was not ultimately required to testify as a key witness failed to appear and the charges against Mr. Pratt were dropped. Ms. Pickard recalled that Stonechild was very relieved that he was not required to testify.

She also described her observations of Neil Stonechild's face at his funeral:

> "Q. Tell me what you observed.
>
> A. A big cut across his nose, bruising on his cheek, under the eye. And my daughter, who was actually the same age as Neil and chummed with Neil quite a bit, my daughter, my husband and myself all had thought at the time that Neil had a broken nose. He was an extremely handsome boy, and we were all quite taken aback. My daughter said, "Mom, Neil's nose is broken." And when Gary and I looked at it, we also thought that his nose had been broken. And it was one of the things that – one of the things that you sort of would notice, because he was an extremely good looking boy, and he had this cut across here and it just looked like his nose had been broken. And we commented on it quite frequently, and wondered how he got those bruises and the cut, and I asked – I don't know whether it was at the funeral, or whether it was at a later time talking to one of the officers, but I asked, and questioned how he could have got those marks on his face, and was told that that's – bodies look like that lots of times when they've been frozen; you know, the bruising and the – they look like that. And of course not knowing a whole lot about frozen bodies, we kind of just took that in stride; okay, well, maybe, you know."[45]

Ms. Pickard testified that when she learned of the Inquiry, she contacted Jason Roy's then counsel, Mr. Worme, and offered to testify.

Gary Pratt[46]

Gary Pratt was a friend of Neil Stonechild. He had known Stonechild since he was 12 or 13 years of age. Mr. Pratt taught wrestling to Stonechild. He characterized Stonechild as like his "little brother". Mr. Pratt was also a good friend of Marcel Stonechild.

Shortly after the body of Neil Stonechild was discovered, the Saskatoon Police Service received tips that Gary Pratt and one or more of his brothers beat on Neil Stonechild and transported him to 57th Street. One of the tips alleged that Stonechild had made an enemy of Gary Pratt, because Stonechild was to testify as a witness against Mr. Pratt in relation to an alleged assault of another of Stonechild's friends, Eddie Rushton. Another tip alleged that Stonechild had been "fooling around" with Gary Pratt's girlfriend, Petrina Starblanket. Mr. Pratt testified that the rumours circulating about his alleged involvement with Neil Stonechild's death were false. He further testified that he was not questioned by the Saskatoon Police Service in regard to Stonechild's death, and that he was not aware that these rumours were circulating in 1990.

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[44] Evidence of Patricia Pickard, Inquiry transcript, vol. 1 (September 8, 2003): 175

[45] Evidence of Patricia Pickard, Inquiry transcript, vol. 1 (September 8, 2003): 176-177

[46] Evidence of Gary Pratt, Inquiry transcript, vol. 32/33 (January 7/8, 2004): 6235-6253 & 6266-6362

During the RCMP investigation into the death of Neil Stonechild, RCMP investigators interviewed Gary Pratt on more than one occasion. As a result of these interviews and the investigative tools used by the RCMP, Gary Pratt was eliminated as a suspect. Mr. Pratt fully cooperated with the RCMP investigation, and with this Inquiry.

At one point during the Inquiry, some counsel aggressively advanced the theory of Mr. Pratt's involvement in the death of Neil Stonechild. These suggestions, for the most part, ended after Mr. Pratt testified. There was no evidence that substantiated the rumours circulating in 1990 that Gary Pratt was involved with the death of Neil Stonechild. There were no witnesses called who could testify that they observed Stonechild in Mr. Pratt's company around the time of his death.

Further, evidence was presented to the Inquiry that contradicted the rumours circulating in 1990. The forensic evidence suggests that the injuries suffered by Stonechild were not consistent with the suggestion that Stonechild was the recipient of a "street justice" beating. In regard to the rumour that Stonechild was "fooling around" with Pratt's girlfriend, Petrina Starblanket, Pratt testified that Ms. Starblanket was never his girlfriend. Mr. Pratt's testimony was not contradicted on this point. While there was some evidence that Neil Stonechild was compelled to attend court for the purpose of testifying against Gary Pratt in the fall of 1990, it is not disputed that Stonechild was ultimately not required testify. The charges against Gary Pratt were stayed, because other witnesses would not attend court to testify against him. Gary Pratt testified to the Inquiry that he did not observe Stonechild in the court room at any time, and that as far he was aware, Stonechild had done him a favour by not showing up for court.

Jason Roy[47]

Jason Roy was born December 22, 1973. He spent his youth in Saskatoon. For most of his elementary school education, he attended St. Mary's Elementary School. During his high school education, he attended a number of high schools: E.D. Feehan High School, Bedford Road Collegiate, Sion High School, Nutana Collegiate, and Joe Duquette High School.

In November 1990, Roy was 16 years old. He confirmed that in 1990 he had drug and alcohol abuse problems. He also had a history of petty criminal behaviour. He testified that he had met Neil Stonechild when they were residents at Kilburn Hall in Saskatoon. In November of 1990 they had been friends for three or four years.

At some point during the day of November 24, 1990, Stonechild and Roy joined up. On that date, Stonechild was absent without leave from his community home and Roy was in breach of a probation order and at large. The two boys decided that they would visit a friend on the east side of the city, which they did. Following that, they returned to the west end on a Saskatoon Transit System bus. En route they encountered Lucille Horse (Neetz) and her boyfriend Gary Horse. The Horse's told him they were going to babysit for Lucille's sister at Snowberry Downs that evening but refused to give Stonechild the address of the apartment.

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[47] Evidence of Jason Roy, Inquiry transcript, vol. 2-5 (September 9-15, 2003): 347-881

On their return, Neil's brother, Marcel, purchased a 40 ounce bottle of spirits for the two young men. The two then walked to the residence of Julie Binning which was located a short distance away, at the corner of Milton Street and Confederation Drive. At the Binning residence, they drank most of the bottle of Vodka. Some accounts suggest they drank the whole bottle, but I conclude that 7 or 8 ounces remained.

Ultimately, Neil announced that he wanted to visit Lucille Horse at Snowberry Downs and invited Jason Roy to accompany him. The two intoxicated boys walked several blocks to the Snowberry Downs apartment complex on 33rd Street. Roy recounted that it was quite cold that evening and they stopped to warm up at the 7-Eleven store on the corner of 33rd Street and Confederation Drive, which was across the street from Snowberry Downs. After warming up, the two crossed the street to the apartment complex, as the boys did not know the apartment where Lucille Horse (Neetz) was staying. Stonechild began randomly ringing apartment buzzers.

Roy described their search at Snowberry Downs and his decision to leave. After searching several buildings in the complex, Roy suggested to his friend that they return to 7-Eleven to get warm. Stonechild insisted on continuing his search. I refer to their final conversation:

> "A. And we didn't find anything in that first building and so we continued around, around the complex to continue looking for a familiar name or something to that effect so that we could find Lucille. In the process of that I remember buzzing a few buzzers and asking for Lucille and not getting any answers. So we continued on around all three buildings and – in the same manner. And we got around to the last building that we were trying to locate Lucille in and we got to a parking lot. By this time it was pretty cold out and I had asked Neil, "Well, let's just go back to 7-11 and warm up for a little while. I'm pretty cold." And he said he didn't want to go, he wanted to continue looking for Lucille. And I kind of asked him a few times, "Come on, like let's just go warm up for a few minutes and then we'll come back and look for her." And he didn't want to, he wanted to continue looking for her. And I said, "Okay, well, I'm going to go to 7-11 and warm up, warm up there, and I'll catch up to you", or something to that effect.
>
> And I proceeded to walk through the parking lot, back towards 7-11, and Neil proceeded to walk between the apartment buildings towards the tennis court. When he got around – as he was walking towards – as he was walking that way, I figured, okay, well, you know, it's pretty cold out here, I think I better just stick with him, you know, I'll just – you know, just keep trying for a little bit longer, maybe I can get him to come warm up in a little bit. So I turned around and I said, "Okay, well, wait up then, I'll just come with you." He said, "Ah, no, that's okay." And I said, "Well, just wait." And he was a distance ahead of me. He was quite a distance ahead of me, maybe about 30 steps. And so I started going behind him and he turned the corner. I was going after him and I tripped and fell, and as I was

> standing up, looking up, he was turning the corner and I was yelling at him to wait for me, just wait for me, I'm going to catch up. And he went ahead, he said that's okay, go back, go back to 7-11, go back to Flora's and do whatever. He was just – you know, he was saying that.
>
> And so I got to the corner where you could see the tennis court and by that time he was already out of my sight, he had already – he was already out of my sight. And so I kept going in the direction where I thought he had went, and I was yelling his name, telling him to wait up for me. I didn't hear any response from him, I didn't hear anything. So I circled that apartment again and I walked back to – back to 7-11 because I couldn't find him. I waited at 7-11 for a while to warm up. I was by myself so I waited long enough so that I was thoroughly warm enough to get back to Doris's house."[48]

Ultimately Roy proceeded to Confederation Drive and arrived at the entrance to an alley that intersects Confederation Drive. That location is identified on the map included in this Report as Appendix "K".

His account of what happened next is as follows:

> "A. …I started walking back down Confederation Drive and I got maybe about two blocks from 7-11 on Confederation Drive and there's an alley approach going on to Confederation Drive right there. And as I approached that alley, a police car pulled in front of me and Neil was in the back. Neil went to – he saw me, he was – he was very irate. He was freaking out. He was saying, "Jay, help me. Help me. These guys are going to kill me."
>
> Q. Did you observe his condition?
>
> A. He had fresh blood on his face across his nose. I couldn't see all that well, but he had his face to the window and he was yelling at me, asking me to help him. Not for one minute did I think that he was in any danger.
>
> Q. Was he handcuffed?
>
> A. Behind his back.
>
> Q. Okay. On this map that's in front of you, are you able to identify where you were stopped by the City Police?
>
> A. Yeah.
>
> Q. I'm sorry, I should have asked that, was it a City Police car –
>
> A. That's right.
>
> Q. – that stopped? All right. Now you've indicated that there was an alley, can you identify which alley that was?
>
> A. These are Twin Gables apartments.
>
> Q. Right.

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[48] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 357-360

A. And it is the alley directly behind it.

Q. Now when you were stopped by the police, which direction was the police car coming from?

A. Down the alley. It cut me off walking down – I was walking down Confed. Drive and it pulled in front of me.

Q. So it was proceeding east down this alley?

A. That's right.

Q. And you were coming south down Confederation Drive?

A. That's right.

Q. I'm just going to mark a "D" there where you've identified that spot...."[49]

"Q. MR. HESJE: Now this car, patrol – it was a marked Saskatoon police car?

A. That's right.

Q. It pulls across from the alley and stops you. Did any – were there officers in the car?

A. There were two.

Q. Or how many officers were in the car?

A. There were two.

Q. Did anybody get out of the car?

A. No.

Q. And you've indicated that Neil was making – was yelling at you or whatever. What – do you recall what the officers said to you? Did you have any conversation with the officers?

A. The officer stopped me and asked me who I was. At the time I was unlawfully at large from a community home and I gave a fake name. I have a false name.

Q. Do you recall what name you gave them?

A. Tracy Lee Horse.

Q. And why did you give them that name?

A. He was somebody that I grew up with and I knew his birthday.

Q. And what was you concern in giving them your real name.

A. For one I didn't want to be in that car, and for two, I didn't want to go back to jail.

Q. Okay. Now what happened, you've given the name, do you recall anything else?

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[49] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 360-361

A. Asked me who I was and he punched it into his computer, the name that I had given him, he punched it into the computer and it took a little while for it to happen. So I kind of took maybe half a step back to just wait for this process to go through. And Neil was freaking out in the back car, back seat of the car. And the officer driving asked me, "Do you know this guy in the back?" I said, no, I didn't know him because I didn't want to – I didn't want to be there in that car with him. The name that I gave came back as not having any warrants or anything like that in order for them to pick me up. I asked, "Can I go now?" And they let me go.

Q. And what happened? Where did you go from there?

A. The car pulled out in front of me and started heading down Confederation Drive.

Q. Which direction did the car go?

A. It was heading south.

Q. On Confederation Drive?

A. And Neil was looking out the back of the window, just staring at me. He looked – he just looked scared. He – he just looked really really scared, and my thoughts at the time were, "Well, he's just going to go back to Kilburn Hall, that will be it. I'll see him when he gets out."

Q. And, Jason, where did you go from there?

A. I went back to the Binning residence.

Q. Did you ever see Neil alive again?

A. No."[50]

Roy confirmed that there were no injuries on his friend's face when he last saw him at Snowberry Downs. He confirmed, also, his report to Cheryl Antoine and Julie Binning, on his return to the Binnings, that Neil had been picked up by the police. He explained that he did not tell the Stonechild family what he had seen that evening until much, much later and well after the discovery of Neil Stonechild's body. He explained that his decision to do so was out of respect for the grieving family. Following the discovery of Neil Stonechild's body on November 30th, Roy phoned the Saskatoon Police Service at 6:52 p.m. and spoke to Sgt. Jarvis in the Morality section. He told Jarvis that he and Stonechild were together on November 24, 1990. Roy was reluctant to give a statement to the police as he was still subject to breach of probation and was concerned that he would be arrested. Ultimately, he arranged with Jarvis to provide a statement on condition that he not be arrested.

Roy described the person who interviewed him as a Plainclothes Officer. He believed there were two officers present, but the evidence did not support the presence of a second person. It appears that only Morality Investigator Sgt. Keith Jarvis attended for the interview at the residence of a Roy family friend. Roy's account of the Jarvis interview is set out hereafter:

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[50] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 363-366

"A. …So what happened was he took out the forms for to write a statement and he said, "Okay, well, I'm going to – I'm going to write them down. I'm going to write down a question and then I'll get you to answer it and I'll write down your – I'll write down your answer." And we did this for about an hour and a half, maybe two hours, and I basically related to him the last time I had seen Neil alive.

Q. Did you tell him specifically that you had seen Neil, the last time you saw him he was in the back of a police cruiser?

A. Yes, I did, and I also would like to mention that as he was leaving I asked him, "What are you going to do with the information I give you?" and he said, "We'll look into it and I'll get back to you."

Q. Did you hear back from him?

A. No.

Q. Now, did you advise him that when you saw Neil in the back of the police cruiser he was handcuffed?

A. Yes.

Q. Did you advise him that he was bleeding and apparently had a cut across the nose?

A. Yes."[51]

Roy identified his handwriting on a statement dated November 30, 1990.[52] The statement is contained in the surviving copy of the Saskatoon Police Service Stonechild investigation file discovered in 2001. Saskatoon Police Service Cst. Ernie Louttit had made a copy of the file in December of 1990 and filed it away in his barrack box at home. He came across the file in 2001 and turned it over to the RCMP.

The text of Roy's handwritten statement dated November 30, 1990 is reproduced below:

> "Me & Neil were at juli Binnngs of 3269 Milton street we were sitting around having coffee & neil said lets go see Trevor and I said ok we left at about 2:00 p.m. and caught the Bus at the confed terminal, and we were talking to this one white guy about old time fights then wee kept on going to Trevor we got there at about 2:45 sat around with Trevor and just talked about custody time & girls. We busing around & I saw an old friend & he lent me $20.00 didn't have nothing to do. We went and hung around circle park mall till around 6:30 & niel said lets go to my moms and get some money from his mom so went over there and niels mom wasnt home so I sold my goves to Marcelle and he went & bought us a 40 ounce oef Silent Sam. We over to juli's and drank the hole bottle straight just me & neil. We were just sitting around talking about whatever and he said lets go find Lucille. So we started on our way to Snowberry Downs I don't rember how we got to seven-11. we stopped there and tried buying something but a cant remember If they sold me anything we started walking

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[51] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 377-378

[52] Handwritten Statement of Jason Roy, dated November 30, 1990, Inquiry exhibit P-6

> over there and stopped on the boulevard and we were arguing but I dont what about and we got to one apartment looked for lucille's sister but it wasn't there so we checked other apartments for the name neetz. But we couldn't it any where so we got to the last apartment and we were about to check it then I must have stopped him and we stood there and argued for what I don't and he turned around and said fuckin Jay and I looked around and blacked out and woke up at juli binnings.
>
> Q. What time approx did you last see Neil Stonechild alive on NOVEMBER 24 1990
>
> A. Could be about 1130 pm.
>
> Q. When you say the name Trevor is that Trevor Nowaselski
>
> A. Yes.
>
> Q. What condition was Neil in when you last saw him
>
> A. Pretty Drunk. Well totally out of it
>
> Q. Is there anything else you wish to tell me
>
> A. No that's all I can think of.
>
> Q. Is this a true statement
>
> A. Yes."[53]

In this handwritten statement, there is no reference to Roy observing Stonechild in the back of a police car. Roy testified that the handwritten statement was "incomplete". I refer to the following:

> "Q. There's a date on the top of this statement. It says – it appears to say November 30th, 1990. Is that statement in your handwriting?
>
> A. Yes, it is. Not all of it though. Not – not the – not everything.
>
> Q. Okay. Now, Mr. Roy, is – to the best of your recollection, is this the statement that you provided at the meeting you've described at the house on Avenue P?
>
> A. No, it isn't.
>
> Q. Why do you say it isn't?
>
> A. Because when the officer came to the house to take a statement I didn't write it.
>
> Q. Do you have any recollection of the length of the statement that was taken on Avenue P?
>
> A. I'm going to have to guess between three and six pages because it took a long time to – to write.

---

[53] Handwritten Statement of Jason Roy, dated November 30, 1990, Inquiry exhibit P-6. The handwritten statement is reproduced in this Report as Appendix "L"

Q. Now, at the bottom of this – both pages of this statement I've put to you, there's a signature. Can you identify that signature?

A. No.

Q. On the bottom right-hand corner?

A. Mine. That's mine.

Q. That is your signature?

A. That's mine.

Q. On both pages on the bottom right-hand corner?

A. Yeah.

Q. Okay. Do you have any recollection of the circumstances in which the statement I've put to you was provided?

A. Yes, I do.

Q. Will you please explain that?

A. This statement was made the first time I got arrested after Neil's death. I – I was arrested, for, one, being on the run, and I'd also been arrested for something else as well. I was – I was brought in to Saskatoon Police Station and I was put into one of the holding cells. The first one – the first – the interview rooms I believe they're – I believe they're – I think they would be. I was asked, "Do you want to reconsider your previous statement?" At that minute I wasn't aware of what he was actually talking about. And I was told, "Write down what you – write down what you remember of that night," and he left the room. As I got to – as I got to the bottom – as I got near the end to the second – as I got to the second page, he came back in, and that's when I finished writing it.

Q. And is this statement truthful?

A. Pardon me?

Q. Is this statement truthful?

A. No, it isn't.

Q. Can you explain why?

A. My birthday was two days later. I wanted to see it. I felt I was in a position – I was in a place where I did not feel safe. I lied for my life.

Q. And in this statement you make no reference to the fact that Neil was in a police car on November 24th; that's correct?

A. That's – that's correct.

Q. And indeed in this statement I believe you made reference to the fact that you blacked out and woke up later at Trudy (sic) Binnings.

A. Yeah.

Q. And again, that is false?

A. Pardon me? Could you –

Q. And that is false?

A. Could you repeat that?

Q. The statement that you blacked out and woke up later at Trudy (sic) Binnings, that was a false statement?

A. That's right.

...

Q. Mr. Roy, did you – what – what happened to you after you provided that statement?

A. I believe I was released."[54]

He described going to the police station at a later date after he had resolved his substance abuse problems:

"Q. Did you have any subsequent contact with the Saskatoon Police Service with respect to Neil Stonechild?

A. After that?

Q. Yes.

A. The only other time that I had any contact, I believe, with them after that was – was after I went and talked to Stella in the bingo. It didn't happen right away within the first day, but I went down to the police station and I approached the desk and asked to speak to two homicide detectives. I wanted to speak to them in regards to – in regards to my friend.

Q. Okay. Do you recall in more detail of what happened then, when you met –

A. I waited –

Q. Did you have your chance to meet with somebody?

A. I waited for a couple minutes until they could find somebody to talk to me. Two men approached me in suits, not – in suits, and I went – I went to talk to them and once again relayed what I thought was wrong with the way my friend died. And they took a couple notes and they said, "We'll get back to you on it."

Q. When you say you relayed what happened to your friend, can you be more specific as to what you told them? Did you tell them that you had seen him in the back of the police car?

A. Yes, I did.

Q. Did you tell them that he was handcuffed?

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[54] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 378-381

A. I believe so.

Q. Did you tell them about the cuts on his face?

A. I believe I – I believe I would have.

Q. Did you hear anything further from the Saskatoon Police Service?

A. No."[55]

I pause here to comment on Roy's account that his handwritten statement, dated November 30, 1990, was given at a later date and while he was in custody. Commission Counsel, in his thorough investigation and interviews with many members of the Saskatoon Police Service, established that Roy was never in custody in December 1990. I refer to the evidence of Cst. Kevin Lewis[56] who confirmed that Roy was arrested on December 20, 1990, but established that he was released to the custody of his mother. Roy never did go to the police station. What, then, prompted Roy to make such a claim? It is obvious that he had forgotten about the November 30, 1990 statement until it was unearthed as a result of Cst. Louttit's discovery.

In the course of vigorous cross-examination, Roy made a number of statements that did not accord with the facts or were unsubstantiated by others. They were given a great deal of attention by counsel representing parties who took issue with Roy's credibility. The following examples will illustrate:

(a) He did not tell the RCMP about the so-called "second statement".[57] He explained that he was skeptical that they would take any action. He also stated that he was "drinking a lot".[58]

(b) The description he gave of his uneventful discussion with Stonechild when Roy decided to return to the Binnings stands in stark contrast to the account he gave the RCMP, and I refer in particular to the language that the boys were using in the midst of a very angry separation. He told the RCMP Investigator:

> "Ahm…we got to the…the last ah apartment where I told them… "okay, it's getting too damn cold…we should turn around and go back"…and he said, "no, we're not….we're not fucken going anywhere…we're…we're gonna stick around and we're gonna go to ah…we're gonna find er". And I said, "fuck that man! Fuck, it's starting to really get cold here…my ar…I'm starting to get really cold". And ah…he says, "Okay, well, fuck you then. Go ahead, go back. Go back to Joe's if you want". And ah…so ah...we…I said, "okay then…I'll see you later" [unintelligible] I…I…started heading back towards there. And he…and I remember him sw…swearing and yelling at me…and ss "okay, fuck you then. See you later then…you're a fucken asshole". I said, "well?" And so…as I was walking away…ah…I…I…I figured okay I'm gonna…I may as well go with him…stick with him…it was pretty cold out. And so [sigh]…I said,

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[55] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 382-383

[56] Evidence of Cst. Kevin Lewis, Inquiry transcript, vol. 9 (September 22, 2003)

[57] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 383-384

[58] Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 714

> "okay…never mind Neil…just wait for me…I'll come with you"…and ah…and then he said, "Na, fuck you…I don't need you…leave me alone"."[59]

Counsel suggested to him that he was trying to portray Stonechild and himself in a more favourable light before the Inquiry and thus he gave a very different account of the conversation during his testimony:

> "Q. Sure. Do you agree, sir, that the reason why you didn't mention anything about Neil swearing at you, calling you a fucking asshole, telling you to fuck off, he would go on his own, didn't care whether you came or not, leave him alone, the reason why you never mentioned anything about that yesterday when you were asked by Mr. Hesje about the conversation was because you thought that wouldn't look very good, that wouldn't sound very good coming from you mouth at this Commission. Isn't that why you didn't tell us about it?
>
> A. There's a lot of – there's a lot of evidence when it comes to this, these circumstances of my friend dying, and I'm sorry I'm not concerned with tone as much as you are when it comes to this. I'm –
>
> Q. Well, Mr. Roy, you know what we're talking about here? We're talking about the last conversation –
>
> A. Okay.
>
> Q. – you had with Neil Stonechild, the last conversation. Understand?
>
> A. Yeah.
>
> Q. I'm not talking about tone. I'm talking about a number of words that weren't referenced anywhere and I'm suggesting to you the reason why you didn't refer to any of that, whether it's tone or words, when you answered yesterday, was because you did not want those words to come out. You did not want to adversely affect, and you thought it would adversely affect, what you had to say about yourself or Neil that night. Isn't that true, sir?
>
> A. I have nothing to hide."[60]

(c) Mr. Fox took serious issue with Roy's statement that he was "on the run from a community home". Roy was unable to provide any information about the home. He gave a very brief description of where the home was located:

> "Q. And I'm asking now what group home that was and you tell us you don't know?
>
> A. You're asking me which group home I was in?
>
> Q. Yeah, what group home. Was it Kilburn Hall, was it – where were you missing from?
>
> A. It was a community home.

---

[59] Witness Statement of Roy given to the RCMP, Inquiry exhibit P-7

[60] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 457-458

Q. Community home. So what home was it?

A. You want, like, address or whatever?

Q. Name, who ran it, what was –

A. It was in Dundonald area, I believe.

Q. Where is it?

A. In the Dundonald area.

Q. In the Dundonald area?

A. Is the area I believe the house was in that I had taken off from.

Q. And who was running that house?

A. I don't remember a name.

Q. You don't remember the name of the people?

A. No, I didn't stay too long."[61]

Counsel pointed out that his record did not disclose that he was in a community home in the fall of 1990. The evidence did establish, however, that he was subject to the terms of a six month probation order dated October 24, 1990, and that he was in breach of the order within two days after it was granted. There was also evidence of Saskatoon Police Service Cst. Brett Maki that established that Roy may very well have been aware that he was wanted on suspicion of committing a robbery at a restaurant earlier in November of 1990.[62]

(d) Roy described one of the officers he saw on November 24/25, 1990, as tall with a mustache and thick rimmed glasses. He reported seeing this person on a transit bus sometime later. I conclude that was in 1991. The officers that stopped Jason Roy on November 24/25, 1990, did not resemble this description, even remotely.

(e) Roy testified he told Marcel Stonechild about seeing Neil in a police vehicle. Mr. Stonechild did not recall any such conversation; he would have remembered it if he had been so advised. Again, there is uncertainty about who Roy told certain things. If I was bound to rely solely on his account of what happened, it would be difficult to reach any firm conclusions. As I have pointed out, however, much of what he said was verified independently.

There were other elements to his evidence that were challenged as well. The obvious question that follows is whether his inconsistencies and contradictions demonstrate that Roy is a liar and require that his evidence be rejected in its entirety. I will have more to say about that in due course.

(f) Roy was questioned closely about the incident which took place two days before his birthday on December 20, 1990:

"Q. On that, I understand on December 20th you weren't arrested because you were unlawfully at large. I understand on December 20th your only arrest then was for a shoplifting charge and you were never taken to cells. You were just turned over to your mom.

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[61] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 494

[62] Evidence of Cst. Brett Maki, Inquiry transcript, vol. 11 (September 24, 2003): 2054-2098

A. Is there a question?

Q. Yeah. Do you – is that possible that that's what happened on December 20th? Is it possible that you weren't arrested because you were unlawfully at large?

A. Is it possible that I wasn't arrested?

Q. For being unlawfully at large. I guess what I'm getting at, Mr. Roy, you've described a situation where you're taken down to the police station – I mean this was put to you as your explanation for why this statement exists, which makes no reference to seeing Neil in the back of a police car, and your explanation was, "Well, I was drunk. I was arrested. I got taken down to the Police Station two days before my birthday. I was arrested for being unlawfully at large and for another charge and so they said, 'Give me a statement,' so I wrote out this statement because I wanted to get out of there. I wanted to see my next birthday, which was two days later." That's what you described for us. Now, all I'm saying is that the records don't seem to support that. The records, the court records in terms of when you were dealt with, the police records in terms of when you were in custody don't seem to support that. Do you have any explanation for that?"

A. No."[63]

I note his answers:

"Q. Yeah, I'm taking your mind back now to what you say was the 20th of December, 1990, right?

A. Okay.

Q. Now, you remember that day?

A. It's fairly hazy.

Q. Well, you seem to remember some things and not other things. Tell me what you can recall from that day.

A. I was under the influence of something when I was picked up that time.

Q. How do you know that?

A. Because the majority of the time I've ever been picked up by the police was under the influence of something.[64]

...

Q. Well, you are telling us on the 20th of December certain matters occurred at the police station, right?

A. Yes.

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[63] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 30, 2003): 525-526

[64] Evidence of Jason Roy, Inquiry transcript, vol. 5 (September 15, 2003): 751-752

Q. Okay. Now, why don't we just refer to your –

THE COMMISSIONER: Excuse me, Mr. Plaxton. Mr. Roy, I think part of the problem is when you use the words "I believe," it creates in the mind of Mr. Plaxton, I suspect, a concern that you're not absolutely sure, and what he's hoping is that you'll be able to tell him, for example, that you recall being arrested –

A. Okay.

THE COMMISSIONER: – and being at the police station in the interview room on the 20th of December.

A. Okay.

THE COMMISSIONER: And I suspect he would like to know with certainty if that is your recollection.

A. Yes.

THE COMMISSIONER: Do you recall that?

A. I – not specifically. Like, not – not right down to the very little last detail."[65]

I am satisfied Roy was mistaken about being in custody and giving a statement. Roy made an interesting comment about his mental state following his friend's death:

"Q. All right. What day did you first learn that Neil had passed away?

A. I don't know exactly the day.

Q. Do you think it was the day that his body was found?

A. Pardon me?

Q. Do you think it was the day his body was found?

A. No.

Q. How much after that do you think it was?

A. At least a few days, couple days, three, four days maybe.

Q. All right, and you say from that moment, from the moment you learned that Neil was dead you were afraid of the police?

A. That's right.

Q. And you were afraid for your life from the police?

A. Yes.

Q. And you say that you were unlawfully at large from a group home at the time, true?

A. Yes.

Q. And yet you agreed to meet with the police officer to give a statement. Is that true?

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[65] Evidence of Jason Roy, Inquiry transcript, vol. 5 (September 15, 2003): 754-755

A. Yes.

Q. So, at a time you say you were afraid for your life from the police and at a time when you knew, or you believed, that the police would have every right to take you into custody because of your unlawfully-at-large status, you agreed to meet with police. Yes?

A. Could you ask me that again?

Q. At a time when you were afraid for your life from the police and at time when you were unlawfully at large, you agreed to meet with police to give them a statement about Neil's death, correct?

A. Yes.

Q. And in that statement you knew that you were going to say that, in your view, the police officers were involved.

A. Pardon?

Q. The statement you were about to give when you met the police officers, you knew that you were going to say that in all likelihood the police had something to do with his death?

A. I was only going to say what I knew and what I seen.

Q. And what you saw was – what you believed was the police officers had beaten him up?

A. I was only going to say what I knew and what I had seen.

Q. Well, but what you saw made you afraid for you life?

A. Yes.

Q. Why? Did you think the police had something to do with his death?

A. I wasn't sure.

Q. Oh, okay.

…

Q. So you weren't necessarily afraid from the police; you were – you weren't sure what you were afraid of?

A. No, I was pretty sure what I was afraid of.

Q. What were you afraid of?

A. That whoever had done this would be coming for me.

Q. And you weren't sure who that was?

A. I didn't want to speculate. I didn't want to believe that –"[66]

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[66] Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 628-631

He also gave this answer:

> "MR. PLAXTON: Were you actively abusing alcohol at the time of Neil's death?
>
> A. Was I – could you repeat that?
>
> Q. Were you actively abusing alcohol at the time of Neil's death? I'm not talking about –
>
> A. Yes, I was.
>
> Q. – that night, I'm talking that period of time.
>
> A. Yes, I was.
>
> Q. Okay. So that's the period during which you were wired, right?
>
> A. Okay.
>
> Q. Is that what you meant?
>
> A. Yeah.
>
> Q. Okay. So you were abusing drugs – or alcohol, I'm sorry, just alcohol? Or were you doing drugs as well during this period?
>
> A. Marijuana maybe.
>
> Q. Okay. So some marijuana and a lot of booze?
>
> A. Yes.
>
> Q. Okay. And that, I'm sure, mixed up your memory a lot?
>
> A. Is that a question?
>
> Q. Yes. Would you agree with me?
>
> A. Yes."[67]

Why then would Roy say he gave a statement on December 20, 1990? In the final analysis, I believe it has to do with Roy's entire involvement with the justice system; his out-of-control life in 1990; and his status as an Aboriginal youth with a criminal record and criminal associates. I have talked elsewhere in this report about the place of Aboriginal people in society and their interaction with the police and the justice system. My earlier impression of these events was that Roy, when faced suddenly with the November 30, 1990 statement, one he obviously did not recall, panicked and cast about for some explanation as to why he would give such an account in light of his description of seeing Neil Stonechild in police custody on November 24/25. After considering the matter at some length, I concluded that there was a germ of truth to his repeated avowals that he had given different information to the police about Neil Stonechild and the two constables. Put in its simplest terms, it comes to this: Roy knew that he had given the person who interviewed him (Jarvis) a full account of what happened on November 24/25. When called upon to provide a written statement of the events, he stopped short of implicating the Saskatoon Police Service. His statement that he "blacked out" was a convenient excuse not to reduce to writing the most important events of that night. Whether his decision was prompted by fear or an unwillingness to be involved any further with the police, matters not. What is central to this whole question, and his repeated insistence that the statement he gave did not reflect what he told Jarvis, is the plain proposition that he told the investigating Officer the whole story; a proposition which is supported by other evidence which I will address in the Report. The fact that ultimately this was not reduced to writing, and that there was no other statement provided, does not, in my respectful view, diminish his account of what happened. The contents of the November 30 statement are in direct contradiction to what he told the women at the Binning house, what he told Stella Bignell, and what he ultimately told the RCMP. And as I have noted elsewhere, his account of what happened was verified by other persons, including Keith Jarvis.

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[67] Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 724-725

In the final analysis, I do not need to rely solely on Roy's account of what happened to reach the conclusions I do. However, I want to make some comments about Roy's presentation as a witness. I had ample opportunity to observe him during his testimony. He struck me as sincere and thoughtful and as still deeply affected by the death of his friend and what followed.

While Roy's testimony contained errors and contradictions, this does not prevent me from finding credible his testimony relating to what he observed on the evening of November 24th and the morning of November 25th, 1990. I am reminded of the words of the Ontario Court of Appeal, affirmed by the Supreme Court of Canada, in *R. v. Abdallah*:

> "There is evidence on which a jury or judge properly instructed and acting reasonably could have convicted. Even with the prior inconsistent statements and the inadequate explanations for them, in these circumstances it was open to the trial judge to accept all, some, or none of the complainants' evidence. Having accepted some of it, it was open for him to convict, as he did, on all three counts."[68]

It is necessary for me to make these observations about his credibility because I might otherwise give the impression that I am depending on other persons' evidence to support him as being credible. That is not the case. The existence of corroborating evidence does, of course, make my task a good deal easier.

I conclude by commending Jason Roy for his tenacity in pursuing this matter over many years.

Tracy Lee Horse[69]

Tracy Lee Horse is a friend of Jason Roy. His date of birth is April 19, 1973. This was the name and date of birth that Roy testified that he gave to the officers who stopped him on the night that Neil Stonechild disappeared. The name and date of birth also appear in the notebook of Cst. Hartwig.[70]

In 1990, Tracy Lee Horse had no criminal record. He further testified that he was never stopped by the police at the time of Neil Stonechild's disappearance. He confirmed that Jason Roy had told him that Roy had used Horse's name and date of birth to mislead Constables Senger and Hartwig when they stopped Roy on Confederation Drive on the evening of November 25th. His evidence was credible and consistent with the other events that took place on that evening.

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[68] (1997) 125 C.C.C. (3d) 482 at 484; aff'd [1998] 1 S.C.R. 980

[69] Evidence of Tracy Lee Horse, Inquiry transcript, vol. 8 (September 18, 2003): 1476-1492

[70] Notebook of Cst. Hartwig, Inquiry exhibit P-180

Cheryl Antoine[71]

Cheryl Antoine, who is a student, was a friend of Neil Stonechild and a former girlfriend of Jason Roy. In November of 1990, she was pregnant with the child of Jason Roy, and the two shared a basement suite on Avenue P and 11th Street. She was present at the Binning home on November 24, 1990, and saw both young men there. She thought they had been drinking prior to their arrival at the Binnings, but it appears she was mistaken in respect to this. She saw the two boys leave the Binnings about 9:00 p.m. She understood that they intended to walk to the 7-Eleven on the corner of 33rd Street West and Confederation Drive. She observed Neil stumble as he left the house, an event that no one else noticed.

She described Jason Roy's return to the Binnings an hour and a half later:

> "Q. When did you next see Jason?
>
> A. A while – after a while. After a while, after – he took a while coming back from the store.
>
> Q. Can you give any estimate of how long he was gone?
>
> A. Oh, about maybe an hour and a half, more.
>
> Q. Was it longer than you expected just to go to the store and come back?
>
> A. Yes.
>
> Q. And when he came back he was by himself?
>
> A. Yeah. Yes.
>
> Q. Do you recall what he told you when he came back?
>
> A. He said that they went over to the apartments. They wanted to go – they wanted to go to the apartments and they were ringing all the buzzers and that they said they would call the cops so Jason said, "I'm going to leave," and he was trying to get Neil to go with him, but Neil didn't want to go so then he left him there. He said he came back from the store and he said that Neil got picked up and we asked him, "Well, how come you didn't get picked up?" And he's like, "I gave them a different name."
>
> Q. Did he say who he got picked up by?
>
> A. Neil got picked up.
>
> Q. But who did he get picked up – who picked him up? Did he say who picked him up?
>
> A. He said – I vaguely remember him telling me that Neil was in the back, he was walking from the store. They pulled him over and they asked him, "Do you know this guy in the back?" And he said no, and then he said that they asked him his name and he said he gave them a different name, and at this time Neil was yelling at him and they drove off.

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[71] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2195-2276

Q. Okay. My question, Cheryl, is did he say – when he said "they drove off", did he say who he was talking about?

A. The police.

Q. And is it your recollection that Jason told you that when he returned to the Binning house that evening?

A. Yes."[72]

Ms. Antoine repeated part of this account to Julie Binning.

Ms. Antoine recalled the police attending their Avenue P home to take a statement from Jason Roy on November 30, 1990. Ms. Antoine also testified that she did not recall Jason Roy telling the police on that evening that the last time he had seen Stonechild was in the back of a police cruiser. Her evidence on this point conflicts with that of Jason Roy and, as discussed below, with statements made by Sgt. Keith Jarvis prior to the Inquiry.

I have concluded that her recollection of the November 30, 1990 police interview of Roy is not dependable, as she is in error with respect to a number of important facts. First, there was one person who attended at the Sunshine residence; she recalls two. Secondly, she does not recall Roy completing a written statement. Thirdly, she says that the Jarvis' visit took place after the funeral. While the evidence was not entirely clear as to when the funeral took place, it certainly did not take place on the date that Roy was interviewed by Sgt. Jarvis (November 30, 1990), because this was the date that the autopsy was performed on Stonechild.[73] These inconsistencies indicate that Ms. Antoine does not have a clear and complete memory of the event. She indeed acknowledged that, while she does not recall it, Roy may have told the police Investigator about seeing Stonechild in the police cruiser:

"Q. And so when you say that you don't remember if Jason told these two people that he had seen Neil in the back of a police car, he – I think you told us that you don't recall him saying that? Was that your evidence, Cheryl?

A. That I didn't recall him saying to these people that – yes, yeah.

Q. So is it possible, therefore, that he may have said it and you simply don't remember it today?

A. Possible, yes."[74]

While Ms. Antoine conceded to Counsel that it was possible that she had forgotten aspects of the November 30, 1990 police interview of Roy, she expressed no such doubt about what Roy had told her on returning from Snowberry Downs on November 25, 1990. In cross-examination, she repeated her statement that Roy had told her that he had seen Neil in the back of a police car. I refer to the following passage:

"Q. But I'm going to ask you, Cheryl, I mean you did seem to be certain about one thing, and that was that when Jason came back without Neil on the night when they went out and they went to Snowberry Downs and they went to 7-Eleven, that Jason said the cops picked him up?

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[72] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2202-2203

[73] Autopsy Report, Inquiry exhibit P-49, reproduced in this Report as Appendix "N"

[74] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2220

> A. Yes.
>
> Q. And you were certain about that?
>
> A. Yes."[75]

She repeated this statement:

> "Q. And did Jason, when he spoke to you that night – and, Cheryl, this is important that we try and focus on what he said to you that night, not what he said the next day or after the funeral or since that time, but when he spoke to you that night, did he say he thought he saw Neil in the back of a police car?
>
> A. He said yeah – yes, he – Neil was in the back of the police car, because they asked him his name.
>
> Q. Did he say he thought he saw Neil –
>
> A. No, he actually said, yes, he saw Neil in the back of the police car."[76]

Ms. Antoine was asked a question about an answer that she gave to RCMP officer, Constable Mayrs, during her interview. I refer to the following passage:

> "Q. Did he say – when asked where Neil was did he say that "I think I saw Neil in the back of a police car"?
>
> A. No.
>
> Q. Can you tell me why you answered the questions the way you did when you answered to Constable Mayrs if that isn't what Neil – what Jason said that night?
>
> A. You know how – for me it's hard – for me personally it's hard to sit here and understand and admit, you know, that this happened, you know, because – it's just it's hard. I'm sitting up here and all these people, these cameras, it's not easy to come up here and, you know –
>
> Q. No –
>
> A. – testify and say, "Hey, he's" –
>
> Q. I know –
>
> A. – "he said this." Okay? It's not – it's not, you know.
>
> Q. And, again, I know it's not easy, but it's –
>
> A. No, it's not.
>
> Q. – but it's –
>
> A. It's not.

---

[75] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2216

[76] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2240

> Q. – but it is important. And all I'm asking, and I won't ask you this again, but I will ask you this, that based on the answers you gave to the statements to the police, at least the night that Jason returned to the Binning residence with the munchies, when asked where Neil was, if he said, "I thought Neil was in the back of a police car"?
>
> A. No, I didn't mean to say it like that.
>
> Q. You didn't mean to say it like that?
>
> A. No, I didn't."[77]

She was asked a further question in cross-examination:

> "Q. Okay. How – I'm sorry, you're Cheryl, yes. How long had he been back from the store before someone asked him where Neil was?
>
> A. Right away."[78]

In the final analysis I conclude that her recollection of Jason Roy's return and her conversation with him is accurately reflected in her earlier statements and that she reported that Roy was quite certain as to what he had seen.

Julie Binning[79]

Julie Binning was a friend of Neil Stonechild and Jason Roy. She was present at her mother's home on Milton Street on November 24, 1990, and detailed the other persons present including Roy and Stonechild. She described them as "somewhat drunk". She and Cheryl Antoine were friends. They stayed up waiting the return of the two young men and confirmed that Roy ultimately returned home approximately one and a half to two hours after he had left. She was then asked:

> "Q. What do you recall when Jason returned whether – did he say anything to you, did you ask him anything?
>
> A. We just asked him where Neil was and he said that he had lost Neil. He had – he just lost Neil on the way back. And then we – we asked him like how did he lose – "How did you lose Neil?" and then he said he might have been picked up by the police.
>
> Q. Did that information surprise you if he suggested he might have been picked up by the police? In other words, did you have any reason to believe that Neil might – that the police might pick him up?
>
> A. Oh, yeah, I – we knew that Neil was wanted. I didn't know what for, but I knew that he was wanted by the police."
>
> …
>
> "Okay. Julie, it's my understanding at that time that you – Neil was a good friend of yours?

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[77] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2244-2245

[78] Evidence of Cheryl Antoine, Inquiry transcript, vol. 12 (September 25, 2003): 2267

[79] Evidence of Julie Binning, Inquiry transcript, vol. 12 (September 18, 2003): 2116-2195

A. Yes.

Q. And that indeed you had been casually dating him?

A. Yes.

Q. Is that fair? Now, did you – you've already testified that that's the last time you saw Neil was at the house. Did you recall any effort to locate him or making any inquiries about where he was the next day or the following days?

A. No, I didn't. I just – I thought that if he was picked up by the police he'd be – he'd probably go back to Kilburn – Kilburn Hall or something.

Q. Do you recall how you first learned that, in fact, he had died?

A. I think I actually watched it on the news.

Q. Now, did you at some point receive any other information or further information as to what might have happened to Neil that – that night after he left your house?

A. Any other information from?

Q. Well, from – from anyone.

A. Oh. Well, what I – I don't know if I heard it right after he died but, you know, there was rumours circulating that he – he was walking back to turn himself in or something like that to the correctional or something. There was some kind of rumours about that, but we didn't believe that because he was only 17 and you obviously have to be 18 to get into correctional. So we didn't believe that. Something else I heard was he was picked up by, I don't know who it was. Actually, I remember a name but I don't know if I should say the name."[80]

Ms. Binning confirmed also that she had heard reports suggesting Neil Stonechild had been walking to the Saskatoon Correctional Centre. She rejected these reports out of hand as did others. She had also heard rumours about the Pratts having some involvement in Neil Stonechild's death.

Lucille Horse (Neetz)[81]

Ms. Horse was a good friend of Neil Stonechild in November of 1990 and knew him quite well. The two had dated for a period of time. Ms. Horse testified that Neil Stonechild's troubles with the law tended to occur when he was under the influence of alcohol. She also testified that Neil Stonechild would also get into a lot of fights when he was drinking.

In 1990, she was in a relationship with Gary Horse, her future husband. On November 24th, Lucille and Gary encountered Neil Stonechild on a Saskatoon transit bus. Stonechild learned that they were babysitting for Ms. Horse's sister that evening in an apartment at Snowberry Downs. Ms. Horse wisely declined to tell her former boyfriend which apartment, expecting there might be a problem later. She was more prescient than she realized.

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[80] Evidence of Julie Binning, Inquiry transcript, vol. 12 (September 18, 2003): 2116-2195

[81] Evidence of Lucille Horse, Inquiry transcript, vol. 5-6 (September 15-16, 2003): 884-955

She confirmed what happened when Stonechild and Roy arrived at Snowberry Downs late Saturday evening and began checking the entry areas of the various apartment buildings to see if they could find the Horses. Each entrance was secured by a locked door and a buzzer system. Ultimately, Stonechild gained entry into the building in which the Horses were babysitting. Trent Ewart, who lived in the apartment, arrived home at approximately the same time and was in the apartment when Stonechild arrived at the door. The occupants could hear him making a good deal of noise as he moved along the corridor banging on doors. Roy was not present during these events. Stonechild proceeded, ultimately, to force his way into the Ewart apartment before he was pushed out by Trent Ewart.[82] He was ordered to leave by Ewart. Stonechild apologized and disappeared. Ewart phoned the Saskatoon Police Service at 11:49 p.m. complaining about Stonechild as drunk and disorderly.[83] Police car 38 was dispatched to Snowberry Downs as a result. As we know, the occupants of that cruiser were Constables Bradley Senger and Lawrence Hartwig.

The Horses and Ewart were the last people to confirm that Neil Stonechild was alive at the Snowberry Downs apartment building late on the evening of November 24th or early on the morning of November 25th, 1990.

Ms. Horse testified she saw Neil Stonechild at 12:30 a.m., which does not accord with other events of which we have an independent record. This witness, who holds two university degrees, was a careful and credible witness. I believe she was only in error as to the time of 12:30. She confirmed that Stonechild showed no sign of injury to his face when she observed him through the peep hole at the apartment. She also noted that he was swaying slightly when he was at the entrance of the apartment.

Curiously, Ms. Horse was never asked for a written statement by the Saskatoon Police Service, notwithstanding, that Mr. Ewart was.

Ms. Horse described her subsequent conversations with Jason Roy and his account of what happened to Neil Stonechild. She recalls initially receiving only sketchy information from Jason Roy about that evening. She could tell that Jason Roy was having a difficult time talking about the evening, and she didn't press him. Her initial understanding from the sketchy comments of Jason Roy was that Roy was hiding behind an apartment building garbage bin, and from that vantage point, observed Neil Stonechild in the back of a police car. Sometime around 1994, Jason Roy disclosed to her that the police had actually approached him with Neil Stonechild in the back of the police cruiser. Jason Roy told her that the police asked him if he could identify the person in the back of the police car. Jason Roy told her that he did not identify Neil Stonechild to the police. He also disclosed to Ms. Horse that he gave the police officers a false name.

Gary Horse[84]

Gary Horse confirmed Lucille Horse's account of what happened at Snowberry Downs. He testified that Roy's 1992 account of what happened to Neil Stonechild was "very vague". In 1994, Roy gave a much more detailed account. In 1994, Jason Roy told Gary Horse that he had left Neil Stonechild at Snowberry Downs and on his way back towards the Binning residence he encountered a police car with a bloodied Neil Stonechild in the back seat. Jason Roy reported being asked by the police officers if he was Jason Roy and if he knew Neil Stonechild. Jason Roy told Gary Horse that he gave the name "Tracey Lee Horse" to the police officers.

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[82] Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1292

[83] Complaint Hardcopy, Inquiry exhibit P-67: 6

[84] Evidence of Gary Horse, Inquiry transcript, vol. 6 (September 16, 2003): 955

Jason Roy told Gary Horse that he had spoken to the police about his account of what happened to Neil Stonechild. Gary Horse recalled that in 1992 he was on a bus with Jason Roy, and Jason Roy indicated to him that he was going to the police station to discuss what he knew about Stonechild's disappearance.

Trent Ewart[85]

In November 1990, Trent Ewart shared an apartment at Snowberry Downs with his girlfriend, Claudine Neetz. Ewart and Neetz went out separately that evening leaving Neetz's sister, Lucille, and her boyfriend, Gary Horse, to babysit their child. The latter had arrived earlier in the day.

While in the apartment, Ewart heard a disturbance in the hallway. He described what followed:

> "Q. Do you recall getting home that night before Claudine?
>
> A. Yeah.
>
> Q. Okay. Do you have any recollection of a disturbance that evening at the apartment building?
>
> A. I can remember the buzzer was ringing a lot and all I remember was I was taking my shoes off and he walked in and I basically just pushed him out the door and locked the door and that was about it. I was also drinking that night too, so –
>
> Q. Okay. Now, when you say "he walked in," did you know who walked in?
>
> A. I didn't know who he was, but Lucille told me after who it was.
>
> Q. And what did she tell you?
>
> A. She said that was her ex-boyfriend, Neil.
>
> Q. Now did – and when you describe you were coming in, are you talking about the doors into the suite, or are you talking about the doors into the building, the apartment building?
>
> A. The doors into the – the actual suite.
>
> Q. Okay.
>
> A. I was just taking my shoes off and he had just kind of walked in right behind me.
>
> Q. All right. And what just as best and in as much detail as you can remember, what happened?

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[85] Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1289-1311

A. Basically I just took my shoes off, I was taking my shoes off and he just kind of walked in and I just kind of pushed him out and locked the door, and that's all that happened."[86]

He did not recall phoning the Saskatoon Police Service to make a complaint about Stonechild but acknowledged that there was a record of his call at 11:51 p.m. He explained that he had been out drinking. He did not recall later comments attributed to him in his written statement to the police, including the following:

"Q. Now, the statement states that, and I'm looking about halfway down the handwritten portion, he left – sorry, and left – "He said, 'Sorry, dude,' and left. He came back and Lucille Neetz said that I should call the police because he was wanted. Then the police came and me and Gary lied to the police because Lucille Neetz didn't want them to give Neil her name. We told them we thought it was Neil Stonechild." You don't have any recollection of those statements?

A. No, I have no recollection of those statements."[87]

Bruce Genaille[88]

Bruce Genaille is a construction worker. He is Neil Stonechild's cousin. He was an important witness at the Inquiry.

On the evening of November 24th, 1990, he was making his way from his home in Snowberry Downs to the residence of a friend. As he walked along Confederation Drive, he was stopped by a Saskatoon Police Service cruiser. The time he estimates was 9:30 p.m. As will be discussed later, the evidence establishes that he was stopped by Cst. Lawrence Hartwig and Cst. Bradley Senger of the Saskatoon Police Service. He gave this account of what happened:

"A. And I – they pulled me over, you know, but they didn't get out of the car, they just asked me what my name was and then basically they asked me your ID, or do you know Neil Stonechild and they – well, they asked me if I was Neil Stonechild first and I said, "No, I'm not Neil, that's my cousin, but I call him Harry," I told them, and I – they kept asking, "Well, do you have your IDs?" and I showed them my IDs but I didn't have a picture ID and they just – they kept asking me, "Are you sure you're not Neil Stonechild?" "Yeah, I told them. That's my cousin, Harry. I call him Harry," I told them, and probably – I kept looking around just to see if any other vehicles are around, you know, and just to – I was wondering why they were kind of keeping me so long. It was five to ten minutes. And they told me that there was some kind of disturbance at the 7-Eleven. And then after a while they, you know, they let me go and I went on to my buddy's place.

Q. Now, did you have identification with you?

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[86] Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1292-1293

[87] Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1296

[88] Evidence of Bruce Genaille, Inquiry transcript, vol. 12 (September 25, 2003): 2276-2302

A. Yeah, I had my license, showed them that. Even after I showed them my license they still didn't believe me.

Q. So after this they let you go and you continued on?

A. Yeah, I went to my buddy's place at Borden Place."[89]

He also stated:

"A. Well, maybe but they were – they kept asking me, you know, if I was Neil Stonechild and I kept telling them, like, that's my cousin, Harry, you know, I call him Harry, not Neil, that's how I know him by.

Q. I see. You knew that – that Harry was on the run or something.

A. I – at that time, no.

Q. Did you ask these – these officers why they were looking for Harry?

A. Yeah, that's what I asked them. That's when they told me about the 7-Eleven there was a disturbance there.

Q. Okay. And did they say that Harry was involved in that disturbance at 7-Eleven?

A. Yeah, that's what they said. Basically they asked me – we're looking for him and there was –

Q. In relation to this disturbance?

A. Yeah, there was a disturbance at the 7-Eleven.

Q. Okay. They didn't say anything about there's buzzers being rung over at – over at –

A. No.

Q. – Snowberry Downs?

A. No, just about the 7-Eleven, that's about it.

Q. Were your – you would have been at home at Snowberry downs just before being approached then and detained by these police.

A. I was there all evening.

Q. And was your door buzzed?

A. No."[90]

Bruce Genaille testified that when he was stopped there was no one in the car other than the two officers.

Mr. Genaille's evidence regarding the officers' reference to a disturbance at the 7-Eleven was not challenged or contraverted. This evidence suggests that Stonechild had caused a disturbance at the 7-Eleven that Stonechild and Roy had visited prior to reaching the Snowberry Downs apartments. Further, as the officers that stopped Mr. Genaille made no mention of a disturbance at Snowberry Downs, this evidence also suggests that Constables Hartwig and Senger were informed of this disturbance and were looking for Neil Stonechild prior to the complaint at Snowberry Downs. Since Mr. Genaille lived at Snowberry Downs apartments at the time, he would have undoubtedly recalled any reference by the officers to a disturbance at Snowberry Downs. While there is no reference in the dispatch records of the Saskatoon Police Service of a complaint involving 7-Eleven on that night, Cst. Hartwig agreed, under cross-examination, that they could have received word of a disturbance at 7-Eleven from the street, rather than from dispatch.[91]

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[89] Evidence of Bruce Genaille, Inquiry transcript, vol. 12 (September 25, 2003): 2279-2280

[90] Evidence of Bruce Genaille, Inquiry transcript, vol. 12 (September 25, 2003): 2288-2289

Mr. Genaille estimated that he was stopped at around 9:30 p.m. In light of the independent evidence of the witnesses discussed above, this estimate is incorrect. I believe it was somewhat later, probably between 10:00 – 11:00 p.m.

Mr. Genaille did not recall the officers conducting a computer check of his name in his presence. The records of the Canadian Police Information Centre indicate that Cst. Hartwig conducted a search of Bruce Genaille's name at 12:04 a.m. on November 25th; well after the time period when they had intercepted Mr. Genaille.

Diana Fraser[92]

Diana Fraser has been an employee of the Saskatchewan Department of Social Services and Justice since 1982. From 1985 to 1990, she was assigned to the Yarrow Youth Farm, an open custody facility for young offenders. She performed various functions over that period including caseworker, youth worker, and parental care supervisor. From 1991 to 1994, she was assigned to Kilburn Hall where she acted as a caseworker and supervisor.

Diana Fraser became acquainted with Neil Stonechild when he was sentenced to custody at the Yarrow Youth Farm. Ms. Fraser testified that Neil Stonechild was a very mature youth, and that he had strong community supports, including his mother. Diana Fraser also became acquainted with Jason Roy while he was in custody at the Yarrow Youth Farm. Diana Fraser recalled that Jason Roy was quite a bright and mature young man, who also had strong support from his mother.

Upon learning of the death of Neil Stonechild, Diana Fraser testified that she heard rumours from within the youth facility where she worked that a month earlier Stonechild had been involved in a fight with Gary Pratt and the McDonald boys. She recalled that many youth in the community and within custody were upset at Stonechild's death, and she was concerned that there may be trouble at Stonechild's wake. In the hopes of preventing a potentially violent confrontation, Diana Fraser contacted the Saskatoon Police Service to inform them of the rumoured fight with the McDonalds and Gary Pratt and to advise the Saskatoon Police Service of the upcoming wake.

At some point in early 1991, Jason Roy and Diana Fraser met. Jason Roy was not in custody at the time. Diana Fraser testified that Jason Roy was visibly upset. Diana Fraser recalls that Roy told her that he had been with Stonechild at Snowberry Downs, and that when he was walking from Snowberry Downs, he saw Stonechild in the back of a police cruiser. Fraser recalls Roy telling her that Stonechild was screaming or shouting "they're going to kill me, man, they're going to kill me". Diana Fraser testified that she did not contact the Saskatoon Police Service with this information because it was disclosed to her within the community, and he did not ask for her help in going to the police. She testified that when she was a youth in another community, she had experiences with the authorities in that community which led her to question the value of making complaints against the police. She also testified that, in her view, the youth that she worked with were seldom believed when they provided unfavourable information about a person in authority.

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[91] Evidence of Cst. Hartwig, Inquiry transcript, vol. 41 (March 16, 2004): 8054-8056

[92] Evidence of Diana Fraser, Inquiry transcript, vol. 9 (September 22, 2003): 1531-1599

Within a few months of this meeting with Jason Roy in the community, Jason Roy was in custody at Kilburn Hall. Diana Fraser was his caseworker. She recalled that he was having trouble sleeping. It was her observation that he was having emotional trouble dealing with the impact of what he had seen on November 24/25, 1990. She referred him to Brenda Valiaho, who was counselling at Kilburn Hall at the time. The purpose of this referral was to assist Jason Roy in dealing with his emotional difficulties. Diana Fraser did not observe that Jason Roy could not remember the events of November 24/25, 1990. Rather, she testified that she observed he was having emotional difficulties dealing with his recollection of the events of November 24/25, 1990.

Brenda Valiaho[93]

Brenda Valiaho's evidence attracted a surprising amount of attention and not a little criticism. As discussed below, Ms. Valiaho's evidence relates entirely to what Jason Roy told her he saw on the night Stonechild disappeared. Her evidence in this regard does not, of course, establish the truth of what Jason Roy told her, and under the strict rules of evidence such testimony in most cases would be excluded under the rules against oath-helping and previous consistent statements. However, as noted by McIntyre J. in *R. v. Beland*, evidence regarding previous consistent statements of a witness will be permitted when it is tendered for a legitimate purpose other than witness bolstering, such as "to rebut the allegation of a recent fabrication or to show physical, mental, or emotional condition".[94] In the case of Ms. Valiaho's evidence, I have no choice but to consider her evidence if only for the purpose of addressing the argument advanced by Counsel for the police interests that Ms. Valiaho planted the story in Jason Roy's mind.

Ms. Valiaho outlined her background and experience in the corrections area as follows:

> "A. Okay. I have a Bachelor of Arts degree. I also have a – sorry, I wasn't expecting that question. I have four university degrees, the last being a Master's in Educational Psychology.
>
> Q. Okay. I don't think you were expecting this one either, but just briefly your work history, whatever it is you've worked in, maybe starting with where you are now.
>
> A. Okay, I'm at the Government Correspondence School. I'm a distance education teacher. It's – the employer is Saskatchewan Learning. This is my ninth year there. Previous to that I worked with – sorry, Social Services, and I

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[93] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1048-1149

[94] [1987] 2 S.C.R. 398 at 410-411

was a teacher at Kilburn Hall for nine years, the Youth Detention Centre. Previous to that I was a high school teacher in Esterhazy for three years. Before that I worked under the Department of Indian Affairs for three years on a reserve in northern Saskatchewan, Dillon, and that's my teaching experience.

Q. Now you mentioned you were a teacher at Kilburn Hall for approximately nine years?

A. That's right.

Q. Can you recall what years that was?

A. Sure. I was hired in June of '86 and I left in June of '95 to move to Regina.

Q. Okay. Can you just explain what that involved, were there actual regular classes held at Kilburn Hall or –

A. Yes, I was hired as a teacher/therapist under Social Services. We had regular classroom times. There were four teachers at that time, three and myself. We had rotating classes, and we had a class for each of the four units, and so the students would rotate through the classrooms on a regular periodic schedule, just like at a school, at a high school, and they moved with their units, so there could be up to 13 students in a classroom at a time, or as many as who were on the units at the time.

Q. I believe you indicated you were hired as a teacher therapist?

A. Yes. That was our title.

Q. And what is the therapist component of that? What does that require of you?

A. At that time it didn't require a Special Ed. degree. I believe it does now, but at that time it did not. But that was the implication, that there be some specialized skills beyond regular classroom teaching, or perhaps some experience that would be beneficial to that role.

Q. Does that – would you be involved in actually counseling as opposed to teaching?

A. No, not, not – not in a recognized capacity, but it certainly was part of the day-to-day, as you can appreciate the turmoil that many students would have experienced on a day-to-day basis.

Q. And prior to 1991 had you had experience in counseling young offenders or youth?

A. I think it was part of my nature, yes, and I also was the cultural program coordinator, working very closely with John Cuthand in – he's a pipe carrier and a sweat lodge holder, so I think my role went beyond the classroom, also. So I would say that I was in a much larger capacity to counsel than perhaps a regula., regular teacher-therapist. Perhaps."[95]

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[95] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1050-1052

She also described her practicum which she undertook in 1991:

> "A. Sure. In '89 I was accepted into the Master's Program at the University of Saskatchewan, and in '91 I was doing my practicum in counseling. I took a half time leave from my teaching position in September, '91 to December, '91 so that in the morning I was employed by Social Services working as a teacher-therapist in the morning, and then in the afternoon I was not employed, I was doing my practicum. I was not paid by Social Services for that. So in the afternoon and in the evening I was this practicum student doing a counseling practicum. So caseworkers within Kilburn Hall, like students would have a caseworker in Kilburn Hall, they would also have sometimes a caseworker in their community, or outside of Kilburn. So inside Kilburn Hall workers would refer youth to me to see on a counseling basis. ..."[96]

Around this time, Jason Roy was serving a sentence in Kilburn Hall, and was referred to Brenda Valiaho prior to his release. As the English and Art teacher at Kilburn Hall, she was already well acquainted with Jason Roy. She described him as a sincere and well spoken young man with good reading ability.

She also described her two meetings with Roy. The purpose of the meetings was to address Roy's difficulty sleeping. The first meeting was designed to build a rapport with Roy. Ms. Valiaho used the first meeting to gain an understanding of his background and family situation. By the end of the first session it was apparent that Roy's trouble sleeping was centred around the event of Neil Stonechild's death. The second session which occurred shortly thereafter was designed to address the concerns underlying his sleeping difficulties. At this second session, Ms. Valiaho asked Jason Roy if he wished to participate in a visualization exercise to recall the senses, sights, sounds, and experiences of the night in question. The following is Ms. Valiaho's recollection of this second session with Roy:

> "Q. Okay. Now what – can you describe then what happened when you go through this process specifically with Jason?
>
> A. Okay. He closed his eyes and basically I would say, you know, "Where are you now? What are you doing," and then we went through step-by-step. Do you want me to, –
>
> Q. Yes.
>
> A. – okay, tell you details?
>
> Q. As much detail as you can recall.
>
> A. Okay. Sure. Basically he explained that he had been partying with Neil, involved in some activities and some visiting. I really don't recall the exact specifics of that, other than they had been partying, he'd been – they'd been drinking together. Then they were at an apartment building or a complex of some kind. Neil was wanting to get in touch with somebody there. There was noise and banging. Jason became concerned because they both were on the run and so he was concerned about that, the noise level, and so he didn't want any part of that and he left the situation. Some time

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[96] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1053-1054

> later he was in the alleyway and a police car drove up and the car stopped and asked him – they asked him who he was and he gave a false name, he explained to me. And he said that he realized that there was somebody in the back seat and he kind of leaned down and realized that it was Neil in the back seat. At this point he became very, very upset in our session. He was between crying and holding his breath. It was like shock. He was nervous, he – it was almost as if he was realizing that what maybe he'd been dreaming about or thinking about was actually playing out for him right there in the session. He said that Neil had said he wanted some help, he wanted help. I also think that there was a point where the police asked if he knew who was in the back seat and Jason said no and Neil said, "Help me! Help me! They're going to kill me!" And the police basically said to Jason, you know, go about your business, and they drove off."[97]

Ms. Valiaho testified that Roy told her he was too afraid to go to the police. Roy refused to allow her to talk to his case worker or her professors about the matter. Ms. Valiaho and Roy developed a plan that would have him talk to Neil Stonechild's family about his account of what happened to Neil. Ms. Valiaho felt that Roy would get some support from Neil's family.

I found Valiaho's evidence helpful and consistent with the accounts of others as to the guilt and emotional distress Jason Roy experienced in the years following his friend's death. The accounts that she received, of course, do not constitute proof of what Roy said, although some counsel seemed to think otherwise.

Her description of her use of visualization was an interesting one and is set down here so that the reader can understand the basis for a later request that Dr. Arnold be called. She testified as follows:

> "Q. What is a visualization exercise, can you explain that?
>
> A. Yes. You've probably heard of athletes who do visualization exercises to prepare themselves for sporting events, where they imagine themselves going over and over the event so that they are successful or they can see themselves being successful. Well, the visualization exercise that I was doing was a recall kind of exercise. And you may have heard of people who have done that, where you close your eyes and you picture yourself in the setting and you, you know, think of the sights, the sounds, what did you do next, where did – you know, what was happening, who was around, that sort of thing. And that's what it was, it was a recall visualization exercise."[98]

I refer, also, to the following evidence:

> "Q. MR. HESJE: Ms. Valiaho, again, I'm simply trying to understand and assist this Commission in understanding, when you say visualization and you gave a general overview of that, but can you tell me, walk me through what you recall doing, what you asked Jason to do, what he did when he started giving you this recitation that you've just went through? Was he asked to lie down, for example?

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[97] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1070-1072

[98] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1069-1070

> A. No. He was sitting comfortably across from me on a couch, I was sitting on a chair. His eyes were closed, he's relaxed, basically blocking out, you know, sort of outer stimulus. We were in the visitors' at Kilburn Hall. It wasn't that stimulating, but he was relaxed. And then I would be using the voice that I'm using now and – you know, "Where are you? What are you doing? What sounds do you hear". And basically that was the process. When he became very upset and realized even more so – I mean in sort of an acute way, not in even more so, but in an acute way that it was – he was seeing Neil in the back seat and that he was bloody, he was – he got upset. And, of course, then his eyes are open and he's crying and then it's – we're here."[99]

Valiaho, in answer to vigorous cross-examination, used the words "to try and remember and recall".[100] I must say that, notwithstanding, that language, the whole thrust and description of the process she used was to assist Roy to deal with his painful memories. I accept her evidence and the propriety of using "visualization" to assist Roy in coming to terms with his harrowing experience.

The theory advanced by Counsel, that Roy's recollections from November 24/25, 1990, were planted by Valiaho, is also refuted by the evidence that Roy shared these recollections with several witnesses prior to meeting with Valiaho, including Julie Binning, Cheryl Antoine, and Diane Fraser. While the level of detail he provided to each of these witnesses differed, the core of his memory was the same; that he saw Stonechild in a police car on the night Stonechild disappeared.

Having said all of this, I say again that I do not need to rely on Ms. Valiaho's account of her sessions with Roy to determine the accuracy of Roy's account of what transpired.

Richard Harms[101]

Richard Harms is a construction worker. He was working at a site at 57th Street the morning of November 29th, 1990. This was the first day that Mr. Harms and his construction crew were working at the site. He first noticed what appeared to be a body in the field north of his location, towards 58th Street, when he looked out the rear window of his tractor. He and his co-worker, Bruce Meyers, approached the object to confirm that it was a body. Mr. Harms came within 30 feet of the body. They then retreated, and Bruce Meyers telephoned the police.

Larry Flysak[102]

Larry Flysak is an account representative employed with the Commercial Weather Services Branch of Environment Canada. He presented climatological information from the Canadian Climate Archive maintained by Environment Canada. In particular, he presented weather records for November 1990. The records disclosed that 0.4 cm of snow fell on the morning of November 24, 1990. There was no snow reported on the evening of November 24/25, 1990, and only trace amounts of snow from November 25 to November 29.

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[99] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1075-1076

[100] Evidence of Brenda Valiaho, Inquiry transcript, vol. 6 (September 16, 2003): 1098

[101] Evidence of Richard Harms, Inquiry transcript, vol. 12 (September 25, 2003): 2101

[102] Evidence of Larry Flysak, Inquiry transcript, vol. 30 (January 5, 2004): 5713-5731

Mr. Flysak also presented records setting out the daily temperature extremes for this time period.[103] This information can be summarized as follows:

Date	Maximum Temp. (Celsius)	Minimum Temp. (Celsius)
November 24, 1990	-15.3	-25.4
November 25, 1990	-14.9	-28.1
November 26, 1990	-13.1	-20.2
November 27, 1990	-14.4	-21.9
November 28, 1990	-7.3	-21.3
November 29, 1990	+4.7	-9.6

3 | The Saskatoon Police Service in 1990

In the next two sections I summarize the evidence of past and present members of the Saskatoon Police Service regarding the events of November 24/25, 1990 and the investigation that followed the discovery of Stonechild's body. Before proceeding with this review of the police witnesses, it will assist the reader to have some understanding of the history of the Saskatoon Police Service and its organization in 1990.

A Brief History of the Saskatoon Police Service[104]

The Saskatoon Police Service was formed in 1903. As the population of Saskatoon grew, so did the Service. In November of 1990, the Saskatoon Police Service was comprised of approximately 351 members providing service to a population of around 183,579.[105] The budget of the Saskatoon Police Service was around $27 million. The Service received 77,821 complaints in 1990.[106] In 2003, the Saskatoon Police Service was comprised of 401 police officers[107], providing service to a community with a population of approximately 213,000 citizens. There are three unions representing the police and non-police employees of the Saskatoon Police Service. C.U.P.E., Local 59, represents most non-police personnel. The Saskatoon City Police Association represents constables, special constables, sergeants, and staff sergeants, totalling 392 members. The Saskatoon Police Executive Officers Association represents directors, inspectors, and superintendents, totalling 8 members. The budget of the Saskatoon Police Service in 2003 was $40,000,000. The total number of complaints for 2003 was not available at the time of the Inquiry hearings. In 2002, there were 90,412 complaints received by the Service.[108]

With the growth of urban populations and municipal police services, the Saskatchewan Legislature, in 1974, enacted modern policing legislation to regulate and provide consistency for municipal police agencies within the province in the areas of discipline, clothing and equipment, forms, recruiting, and training. *The Police Act*[109] provided each municipality with a Board of Police Commissioners that is responsible for the delivery of policing services within the municipality and for developing long term plans for the police service. The legislation gave the

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[103] Surface Weather Record, Inquiry exhibit P-127 and P-128

[104] This history is based upon the evidence given by Deputy Chief Dan Wiks, Inquiry transcript, vol. 33 (January 9, 2004): beginning at 6371

[105] 1990 Annual Report of the Saskatoon Police Service, Inquiry exhibit P-81

[106] Report of Deputy Chief Wiks, Inquiry exhibit P-166

[107] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6382

[108] Report of Deputy Chief Wiks, Inquiry exhibit P-166

[109] R.R.S. 1978, c.P-15, hereinafter referred to as *"The Police Act"*

Chief of Police the ultimate responsibility for the management, administration, and operation of the police service, including the maintenance of law and order in the municipality.

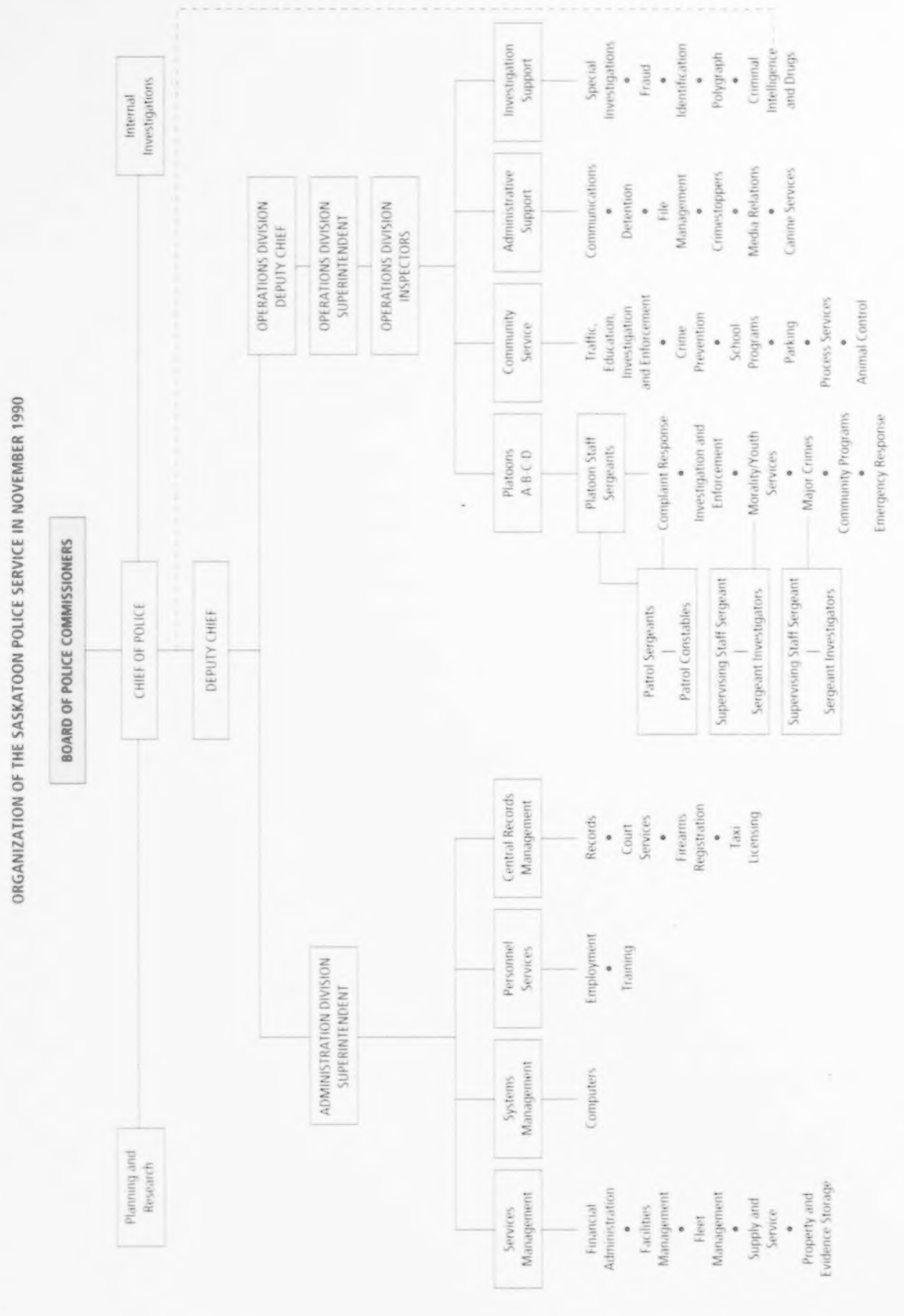
The Police Act also assigned to the Chief of Police the responsibility over the maintenance of discipline within the police service. The legislation and associated regulations provided a disciplinary code of conduct for members of a police service and a system for the investigation of complaints against members. In relation to complaints about members of a police service, the Act created a mandatory responsibility on the part of the Saskatchewan Police Commission, the local Board of Police Commissioners, the Chief of Police or a Municipal Council (in the absence of a Board) to make "sufficient inquiry" into the circumstances of a complaint and to inform the complainant of their findings. Part IV of the *Discipline Regulations* provided the following procedural steps must be taken as a result of a complaint. Upon receipt of a complaint, the Chief of Police was to assign a member to investigate and report back. Upon receipt of the report, the Chief of Police was required to consider: a) taking disciplinary action against the accused member, b) advise the member as to future conduct, or c) take no action against the member.

I note in passing that *The Police Act* was repealed and replaced in January of 1992 with *The Police Act, 1990*. This is the legislation that currently governs municipal police services in Saskatchewan, subject to some amendments passed over the years. *The Police Act, 1990* created a much more sophisticated system for the processing of complaints and discipline of members. With respect to complaints, *The Police Act, 1990* provides for the establishment of a Complaints Investigator appointed by the Lieutenant Governor in Council (s. 16). The powers and the responsibilities of the Investigator are set out in s. 39. Section 45(1) requires the Chief of Police, in consultation with the Investigator, to cause an investigation into public complaints against members. The Chief of Police can decide, based upon the investigation, that disciplinary charges or action is warranted (s. 48). Section 45 also provides that the Investigator can assume control and responsibility for the investigation when it is advisable. The Investigator may then report to the Chairperson of the Commission (s. 45(4)). The Chairperson has the power to order the Chief of Police to pursue discipline (s. 45(5)). The Investigator is not compellable to give testimony according to s. 39(7), except in discipline proceedings under the Act. With respect to the discipline process, the major change is the advent of the Hearing Officer. Hearing officers are appointed by the Lieutenant Governor in Council (s. 17). Hearing officers must be members of a law society in Canada for at least 5 years or must have been a member of the judiciary. The disciplinary charges brought against members are, for the most part, adjudicated by the Hearing Officer (s. 54-59). There are also various provisions addressing appeals to the Saskatchewan Police Commission.

There is no evidence that the Saskatoon Police Service received any formal written complaint against any of its members in relation to the Stonechild matter. However, I am satisfied that there were a number of disturbing complaints received by the Saskatoon Police Service, including information provided to members of the Saskatoon Police Service by Jason Roy; the complaints of the Stonechild family that were published on the front page of the StarPhoenix about the adequacy of the investigation; and, as will be discussed later, internal complaints by members of the Saskatoon Police Service. There is no evidence that the complaint process mandated under *The Police Act* was ever initiated by the Saskatoon Police Service in response to any of these complaints.

Organization of the Saskatoon Police Service in 1990

The structure of the Saskatoon Police Service in 1990 is summarized in the following Chart.



ORGANIZATION OF THE SASKATOON POLICE SERVICE IN NOVEMBER 1990

BOARD OF POLICE COMMISSIONERS
CHIEF OF POLICE
Internal Investigations
Planning and Research
DEPUTY CHIEF
OPERATIONS DIVISION DEPUTY CHIEF
OPERATIONS DIVISION SUPERINTENDENT
OPERATIONS DIVISION INSPECTORS
Investigation Support
Special Investigations • Fraud • Identification • Polygraph • Criminal Intelligence and Drugs
Administrative Support
Communications • Detention • File Management • Crimestoppers • Media Relations • Canine Services
Community Service
Traffic, Education, Investigation and Enforcement • Crime Prevention • School Programs • Parking • Process Services • Animal Control
Platoons A B C D
Platoon Staff Sergeants
Complaint Response • Investigation and Enforcement • Morality/Youth Services • Major Crimes • Community Programs • Emergency Response
Patrol Sergeants
Patrol Constables
Supervising Staff Sergeant
Sergeant Investigators
Supervising Staff Sergeant
Sergeant Investigators
ADMINISTRATION DIVISION SUPERINTENDENT
Central Records Management
Records • Court Services • Firearms Registration • Taxi Licensing
Personnel Services
Employment • Training
Systems Management
Computers
Services Management
Financial Administration • Facilities Management • Fleet Management • Supply and Service • Property and Evidence Storage

As illustrated in the Chart, the Saskatoon Police Service in 1990 had a complex hierarchical paramilitary command structure. In order to best grasp the evidence of the police witnesses who testified at the Inquiry, a basic understanding of the relevant divisions and departments and the command structure in place within the Saskatoon Police Service in 1990 is needed.

Departments and Divisions

In 1990, the Saskatoon Police Service was divided into two divisions; an **Operations Division** and an **Administrative Division**. The uniform and investigative services of the Saskatoon Police Service fell under the Operations Division. The members who worked within the Operations Division, including uniform and investigation officers, were divided into **Platoons**. Each uniform and plainclothes member was assigned to one of four Platoons; Platoon A, B, C, and D.[110] This alignment of personnel was a marked departure from the organization in place in past.

Throughout most of its history, the investigation services of the Saskatoon Police Service have been conducted through various specialized investigation sections or units, such as the Major Crimes Unit, the Criminal Intelligence Unit, and the Morality Unit. These investigative units were staffed by investigators who were experienced in those specialized areas. In 1988, however, the Saskatoon Police Service adopted a change of philosophy in regard to the conduct of investigations. This resulted in a significant change to the organization of the Saskatoon Police Service. The Saskatoon Police Service, for the most part, abandoned specialized investigation units for a generalized approach to investigations. The theory propounded at the time was that an Investigator should have or develop the skills to handle every kind of investigation. As a result, the investigators at the Saskatoon Police Service were taken out of the specialized units and disbursed amongst the platoons. It was hoped that by integrating plainclothes investigators with the uniformed officers in platoons, the lines of communication between investigators and front line members would be improved.[111] Once, however, this generalized approach was implemented, a concern arose that members assigned to investigate crimes did not have adequate experience especially in respect of serious crimes such as homicide.[112]

This generalized approach to investigations was still in place in 1990.[113] By November of 1990, however, the move back towards specialization was already occurring.[114] In November of 1990, the Saskatoon Police Service had such specialized departments as the Major Crimes Unit and a Morality Unit, though these investigation units were still administered through the platoons, and there was no clear separation between the uniform and the plainclothes divisions. It was not until 1992 that the uniform and the detective operations were separated and the return to specialized investigation units was complete. Under the current organization of the Saskatoon Police Service, the uniform and plainclothes divisions are separated and a specialized approach to investigations is followed. I will say more about this generalized approach to investigations that was in place in 1990, and the problems associated with this approach.

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[110] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6568-6569

[111] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6372-6376

[112] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 36 (March 9, 2004): 6734

[113] See Organizational Chart, page 67 (October 15, 2003): 3655

[114] See Evidence of Murray Montague, Inquiry transcript, vol. 19

The **Morality Unit**, sometimes referred to in the evidence as the Morality Section, was an investigative unit of the Saskatoon Police Service in place in 1990. The investigators in this unit, who typically held the rank of sergeant, were responsible to investigate offences against the person. Its mandate included liquor licensing laws, prostitution, harassing phone calls, family disputes, unified family court, suicides, accidental deaths, industrial deaths, and sudden deaths.[115] Around 1990, the Morality Unit operated closely with the Youth Section, which mainly investigated cases of sexual abuse.[116]

The **Major Crimes Unit**, sometimes referred to in the evidence as the Major Crimes Section, was another unit of the Saskatoon Police Service responsible for investigating the most serious crimes including, robbery, arson, and homicide. Major Crimes was responsible for investigating any death where foul play was suspected.[117]

The work of the Morality and Major Crimes Units was supported by the **Identification Section**. The role of an Identification Officer at a crime scene was to take photographs, and collect evidence to assist the Investigator.[118] The Identification Officer may also provide additional assistance to the Investigator, such as attending and photographing autopsies.

As portrayed on the above Chart, there were a number of other departments within the platoons and the Operations Division. As these departments have no direct bearing upon the matters at hand, they are not described in this Report.

Command Structure

As indicated on the above Chart, the ultimate responsibility for policing within a municipality in 1990 was with the **Board of Police Commissioners**. Under *The Police Act*, the Board is responsible for providing general direction, policy and priorities and for developing long term plans for the Police Service. The ultimate responsibility for delivery of policing services within the City of Saskatoon rests with the Board.

The day-to-day management of the operations of a municipal police force fell to the **Chief of Police**. *The Police Act* gives the following general powers and responsibilities to the Chief of Police:

a. the management, administration and operation of the Police Service;

b. the maintenance of law and order in the municipality;

c. the maintenance of discipline within the Police Service.

In carrying out these duties, the Chief of Police is only subject to the general direction of the Board and the provisions of *The Police Act*. The significant responsibilities and discretionary power of the office of Chief of Police were commented on by Lord Denning in *Regina v. Metropolitan Police Commisioners, Ex Parte Blackburn:*

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[115] Evidence of James Albert Brooks, Inquiry transcript, vol. 16 (October 9, 2003): 3077; Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4431

[116] Evidence of Theodore Johnson, Inquiry transcript, vol. 18 (October 14, 2003): 3577

[117] Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3230-31; Evidence of Theodore Johnson, Inquiry transcript, vol. 18 (October 14, 2003): 3362; and Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3582

[118] Evidence of Robert Morton, Inquiry transcript, vol. 13 (October 6, 2003): 2340-41

> "The office of Commissioner of Police within the metropolis dates back to 1829 when Sir Robert Peel introduced his disciplined force. The commissioner was a justice of the peace specially appointed to administer the police force in the metropolis. His constitutional status has never been defined either by statute or by the courts. It was considered by the Royal Commission on the Police in their report in 1962 (Cmd. 1728). I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the *Police Act 1964* the Secretary of State can call on him to give a report, or to retire in the interests of efficiency. **I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace.** He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but **in all these things he is not the servant of anyone, save of the law itself.** No Minister of the Crown can tell him that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. **The responsibility for law enforcement lies on him.** He is answerable to the law and to the law alone. That appears sufficiently from *Fisher v. Oldham Corpn.*, [1930] All E.R. Rep. 96, the Privy Council case of A.-G. for *New South Wales v. Perpetual Trustee Co. (Ltd.)*, [1955] 1 All E.R. 846.
>
> Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police, or the chief constable, as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction on such a matter."[119] (Emphasis added)

The office of **Deputy Chief, Operations Division** was an administrative position involving planning, budgeting, discipline, and staffing of the operational division of the Saskatoon Police Service. The investigative units of the Saskatoon Police Service were the responsibility of the Deputy Chief of Operations. He reported to the Chief of Police.[120]

The **Superintendent of Operations Division** was the next senior ranking administrative position in the Operations Division.[121] The Superintendent of Operations was in charge of both uniform and plainclothes operations.

The position of **Inspector** was a junior commissioned rank between top administration and the working force. The inspectors were assistants to the superintendents.[122] An

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[119] [1968] 1 All.E.R. 763 (C.A.) at 769

[120] Evidence of Murray Montague, Inquiry transcript, vol. 19 (October 15, 2003): 3646

[121] Evidence of Murray Montague, Inquiry transcript, vol. 19 (October 15, 2003): 3647; Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3580

[122] Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3577; Evidence of Joe Penkala, vol. 21 (October 20, 2003): 3908

Inspector was assigned to each Platoon to oversee the operations of the Platoon.[123] The **Inspector in Charge of Investigative Support** had the following responsibilities:

a. to provide immediate supervision and direction of all subordinate unit heads;

b. to maintain up-to-date knowledge of major investigations being handled, the progress made, any problems encountered, and to advise the Superintendent of Operations Division accordingly; and

c. to ensure all personnel under his/her supervision promptly carry out their duties and responsibilities.[124]

A **Duty Inspector** was assigned to oversee each shift that was on duty. It was the responsibility of the Duty Inspector to oversee major incidents, major events and to address any problems that may arise during the shift. The Duty Inspector acted as the Chief of Police when the Chief or the Deputy was not present.[125]

The rank of **Staff Sergeant**, a non-commissioned officer position, was the next highest rank after Inspector. Staff Sergeants were the highest ranking members within the scope of the Saskatoon City Police Association. In 1990, **Platoon Staff Sergeants** were in charge of both uniform officers and plainclothes investigators. However, plainclothes investigators also reported to **Investigative Unit Staff Sergeants** who assigned and supervised investigation files within the investigation units such as the Major Crimes Unit and the Morality Unit.[126] While Investigative Unit Staff Sergeants supervised the investigative files assigned to investigators within the unit, the platoon staff sergeants controlled the deployment and the performance of investigators. This confusing distribution of responsibility proved inefficient and ineffective.[127] Officers with the rank of Staff Sergeant also filled the position of **Reader** in 1990.[128] The post of Reader was occupied typically by members who were referred to as **Operational Staff Sergeants**. It was the Reader's function to review occurrence and investigation reports dictated by officers and typed by Central Records. The Reader would then direct the report to the unit or section within the Saskatoon Police Service where the file was assigned. If the report reviewed by the Reader related to a file that had not yet been assigned, then the Reader had discretion to decide which unit or section should be assigned the file. Once the Reader assigned a file to a particular investigative unit, such as Morality, the Investigative Unit Staff Sergeant would assign an Investigator and supervise the conduct and conclusion of the file. The Reader's desk was staffed 24 hours a day. There was one Reader assigned to each of the four platoons.

The rank of **Sergeant** was the next highest rank in the Saskatoon Police Service after Staff Sergeant. The **Patrol Sergeant**, sometimes referred to as the Area Sergeant, was the senior officer on patrol during a shift. Patrol sergeants were routinely called to co-ordinate the efforts of constables at major incidents such as crimes scenes or the discovery of a body. The Patrol Sergeant delegates various tasks to the attending constables and determines what, if any, additional assistance is needed at the scene, such as Identification personnel and investigators.[129] The investigative units within the Saskatoon Police Service, such as Morality and Major Crimes, were staffed mainly by **plainclothes sergeants**. These plainclothes investigators were on a four day on, four day off, 12 hour shift rotation. This led to complaints that investigation files would sit too long without any investigation.[130] I will have more to say about the problems associated with this shift rotation later.

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[123] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6570

[124] Evidence of Joe Penkala, Inquiry transcript, vol. 21 (October 20, 2003): 3906, Inquiry exhibit P-95

[125] Evidence of Dave Wilton, Inquiry transcript, vol. 38 (March 11, 2004): 7384-7385; Evidence of Joe Penkala, vol. 19 (October 15, 2003): 3715

[126] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6595

[127] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6595

[128] For a description of the duties and responsibilities of the Reader position in 1990, see Evidence of Raymond Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2539-2643; and Evidence of James Drader, Inquiry transcript, vol. 16 (October 9, 2003): 3045-3048

The position of **Constable** was the lowest rank in the Saskatoon Police Service in 1990. It would be a mistake, however, to conclude from the status of this rank that constables in the Saskatoon Police Service in 1990 did not wield significant authority. Police constables have considerable discretionary power bestowed upon them as officers of the law.[131] With this power comes a corresponding duty to the public. In *Jane Doe v. Toronto (Metropolitan) Commissioners of Police*, Mr. Justice Henry wrote: "At common law, a constable has not only a general duty to prevent crimes and arrest criminals, but also a general duty to protect the life and property of the inhabitants."[132]

Police constables occupy a special position in a democratic state founded on the rule of law; as patrolmen and patrolwomen, police constables are the frontline officers. They are the peace officers who have the most contact with citizens, and they are often called upon to risk their personal safety to protect the lives of those they serve. The contribution that police constables make to society cannot be overstated. In light of this important role, the office of Police Constable must only be occupied by trustworthy and honest individuals.

4 | The Saskatoon Police Service Officers Dispatched to Snowberry Downs

On the night that Neil Stonechild was last seen alive, Cst. Larry Hartwig and Cst. Bradley Senger of the Saskatoon Police Service were dispatched to remove Stonechild from the Snowberry Downs apartment complex. This fact was irrefutably established by police records and the officers' own notebooks.

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[129] Evidence of Staff Sergeant Petty, Inquiry transcript, vol. 13 (October 6, 2003): 2486-2489

[130] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 38 (March 11, 2004): 7392; Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3602-3605

[131] *The Police Act* conferred upon constables, and all members of municipal police services, the following responsibilities and powers: a.) preservation of the peace; b.) prevention of crime and offences; c.) the apprehension of criminals, offenders and others who may lawfully be taken into custody; d.) execution of all warrants; e.) performance of all duties that may be lawfully performed by constables or peace officers in relation to the escorting and conveyance of persons in lawful custody to and from courts, places of confinement, correctional facilities or camps, hospitals or other places. The Oath of Office sworn by constables joining a police service was prescribed in *The Police Act*:

> "**Oath of Office and Code of Conduct**
> "I, _______, do swear that I will well and truly serve Her Majesty the Queen in the office of police constable for the _____(City) of ___________, with no favour or affection, malice or ill will; that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against the person and properties of all persons, and that I will to the best of my skill and knowledge discharge all the duties of my office faithfully and according to law. So help me God."

[132] (1989) 58 D.L.R. (4th) 396 (Ont.H.C.) at 421

Police Records for November 24/25, 1990

A record of the Ewart complaint is contained in electronically-stored Saskatoon Police Service files. The record is stored in the electronic information management system maintained by the Saskatoon Police Service since 1981; the Saskatoon Information Management System, which is commonly referred to at the Saskatoon Police Service as the **SIM System**.[133] The dispatch record that is contained in the SIM System is called a **Complaint Hardcopy**.

A Complaint Hardcopy is a report maintained on the SIM System that is generated out of the Communications Centre of the Saskatoon Police Service. When the Communication Centre receives a complaint, a Complaint Hardcopy is created that records such things as the time of the complaint, the location of the complaint, the complainant's name, the names of suspects, and the names of the officers dispatched to the complaint. A Complaint Hardcopy also includes the time the attending officers reported being en route, the time the attending officers reported being at the scene, and the time that the dispatched officers reported completing the dispatched call. This information is inputted into the SIM System directly by the attending officers during the dispatch through mobile data terminals. Mobile data terminals, commonly referred to as **MDTs**, were installed in patrol vehicles in the late 1980's.

MDTs have a dual function. As indicated, MDTs allow the Communication Centre of the Saskatoon Police Service and patrol officers to communicate information about dispatches. MDTs also allow patrol officers to access information such as criminal records. The MDTs in 1990 gave patrol officers full search access to the Canadian Police Information Centre database, a national records database commonly referred to as the **CPIC**. It can be searched by local police departments such as the Saskatoon Police Service. The CPIC national office has the ability to determine what queries were conducted by police officers in 1990. This is referred to as an offline search. The RCMP conducted a number of offline searches in relation to the RCMP investigation into to the death of Neil Stonechild. The documentary results of some of these offline searches were made inquiry exhibits, and they established that Cst. Senger and Cst. Hartwig made a number of CPIC queries in relation to their search for Neil Stonechild.

When the information from the Ewart Complaint Hardcopy and the CPIC offline searches is collated, the following sequence of events is revealed:

11:49 p.m., November 24, 1990

The Communications Centre of the Saskatoon Police Service received the complaint of Trent Ewart.[134]

11:51 p.m., November 24, 1990

The Communications Centre dispatched Cst. Senger and Cst. Hartwig to Snowberry Downs. The remarks that accompanied the dispatch were "DRUNK TO BE REMOVED NEIL STONECHILD, 17 YEARS OLD". Within moments of receiving the dispatch, the officers press the "en route" button on the MDT to indicate that they are on the way to Snowberry Downs.[135] Both the notebooks of Cst. Senger[136] and Cst. Hartwig[137] contain reference to this dispatch.

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[133] Evidence of Jack Heiser, Inquiry transcript, vol. 17 (October 10, 2003): 3137-3216

[134] Complaint Hardcopy, Inquiry exhibit P-67

11:56 p.m., November 24, 1990

Cst. Hartwig or Cst. Senger presses the "at scene" button on the MDT which is intended to indicate that they have arrived at the scene of the disturbance.[138]

11:56 p.m., November 24, 1990

Cst. Senger performed a CPIC query on the names "Tracy Horse" and "Tracy Lee Horse" with the date of birth of April 19, 1974.[139] This was the false name provided by Jason Roy. The name and date of birth is also recorded in Cst. Hartwig's notebook.[140]

11:59 p.m., November 24, 1990

Cst. Senger performed a CPIC query of the name "Neil Stonechild" with an age of 18.[141] Charles Moore, an employee of CPIC, testified that a warrant for Neil Stonechild was posted on the CPIC System by the Saskatoon Police Service on November 22, 1990 for being unlawfully at large from a community home. Cst. Senger's CPIC query would therefore have turned up this outstanding warrant.

12:04 a.m., November 25, 1990

Cst. Hartwig conducted a CPIC query of the name "Bruce Genaille" with a date of birth of April 21, 1967.[142] I pause to note that it should not be concluded that the time of the CPIC query was the time that Bruce Genaille was in the presence of Cst. Hartwig and Cst. Senger. I concluded earlier in the Report that this query was conducted long after Genaille was stopped by the officers. As discussed below, this is not the only example from that night of the officers performing a CPIC query of an individual long after the fact.

12:17 a.m., November 25, 1990

Cst. Hartwig or Cst. Senger presses the "in service" button on their MDT indicating that they had cleared the call.[143] The officers also inputted the remark "GOA" into the MDT, which stands for gone on arrival. "GOA" is also recorded in the notebooks of Cst. Senger[144] and Cst. Hartwig.[145]

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[135] Complaint Hardcopy, Inquiry exhibit P-67
[136] Notebook of Cst. Senger, Inquiry exhibit P-194
[137] Notebook of Cst. Hartwig, Inquiry exhibit P-180
[138] Complaint Hardcopy, Inquiry exhibit P-67
[139] CPIC Offline Summary, Inquiry exhibit P-88
[140] Notebook of Cst. Hartwig, Inquiry exhibit P-180
[141] CPIC Offline Summary, Inquiry exhibit P-88
[142] CPIC Offline Summary, Inquiry exhibit P-88
[143] Complaint Hardcopy, Inquiry exhibit P-67
[144] Notebook of Cst. Senger, Inquiry exhibit P-194
[145] Notebook of Cst. Hartwig, Inquiry exhibit P-180

12:18 a.m., November 25, 1990

The Communications Centre of the Saskatoon Police Service dispatched Cst. Hartwig and Cst. Senger to investigate a complaint of a suspicious person no more than a couple blocks away from Snowberry Downs on O'Regan Crescent.[146]

12:24 a.m., November 25, 1990

Cst. Hartwig or Cst. Senger pressed the "at scene" button in regard to the O'Regan Crescent complaint.[147]

12:27 a.m., November 25, 1990

Cst. Senger or Cst. Hartwig presses the "in service" button in regard to the O'Regan Crescent complaint with the remark "GOA".[148]

12:30 a.m., November 25, 1990

Cst. Senger conducted a CPIC query of the name "Trent Ewart" with the age 16.[149] There was no satisfactory explanation offered as to why the officers would be querying the record of the Snowberry complainant long after they cleared that call.

Thus, the SIMs and CPIC records establish that Cst. Senger and Cst. Hartwig were the officers sent to deal with Stonechild, and the records also confirm Jason Roy's evidence that he was stopped and gave a false name to the police. This documentary evidence combined with the evidence of Jason Roy lead the RCMP to investigate Cst. Hartwig and Cst. Senger as suspects.

I now turn to the testimony of the officers.

Constable Lawrence Hartwig[150]

Cst. Lawrence Hartwig joined the Saskatoon Police Service in 1987. Prior to joining the Saskatoon Police Service, he was employed as a Conservation Officer by the Province of Saskatchewan for approximately five years. Cst. Hartwig was assigned to the Patrol Division for the first ten years of his service.

In November of 1990, he was assigned to District 8 on the west side of Saskatoon. At that time he did not have a regular partner. On November 24th, 1990, Cst. Hartwig worked a night shift starting at 8:00 p.m. and concluding at 8:00 a.m. on November 25th, 1990. He next worked the day shift on November 29th, starting at 8:00 a.m. At some point during his shift of November 24th, he was joined by Cst. Bradley Senger. Because Hartwig was the senior of the two officers, and they used the car assigned to Cst. Hartwig, Hartwig was likely driving with Senger in the passenger seat. This may have changed over the course of the shift.

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[146] Complaint Hardcopy, Inquiry exhibit P-37
[147] Complaint Hardcopy, Inquiry exhibit P-37
[148] Complaint Hardcopy, Inquiry exhibit P-37
[149] CPIC Offline Summary, Inquiry exhibit P-88
[150] Evidence of Lawrence Hartwig, Inquiry transcript, vol. 40/41 (March 15/16, 2004): 7705-8113

Cst. Hartwig had some independent recollections of the night shift of November 24th, 1990. He recalled attending an assault complaint which originated at Confetti's nightclub. He also recalled attending at a residence to notify a woman that her husband had killed their two young sons and himself. I understand why such event would make an impression, and be recalled by Hartwig, even 10 or more years after the fact. The first event, however, was unexceptional. Why would it stand out in Hartwig's memory? Based on his notes, dispatch records, CPIC records, and other Saskatoon Police Service Reports, Cst. Hartwig testified as to other events of that shift. However, he had no independent recollection of these events. Although Hartwig claimed to have no recollection of events of November 24th, except as noted above, he did deny that he had Neil Stonechild in his car on the night of November 24/25, 1990. He also suggested that certain things did or did not occur, based on his practices.

Cst. Hartwig identified several entries in his notebook with respect to the Stonechild dispatch on November 24th. The names Tracy Lee Horse, Bruce Genaille and Neil Stonechild are all noted. A review of his notes did not assist Hartwig in recalling the events relating to the complaint about Stonechild and responding to that call.

The names Tracy Lee Horse and Bruce Genaille both appear in Hartwig's notebook before reference to the dispatch call of 23:51 regarding Neil Stonechild. Hartwig explained this by saying that calls-in-progress are generally written down in the notebook after the call is cleared. Hartwig stated that he did not know a person named Tracy Horse or Tracy Lee Horse and that any reference to that name in his notes would have to come from somebody who gave him that name. He acknowledged that it was possible that he stopped Jason Roy that evening and was given the name of Tracy Lee Horse. At the time he did not know Jason Roy.

Dispatch records show Hartwig and Senger at the scene of the Ewart complaint at 11:56 p.m. This is the same time the CPIC query was run on Tracy Lee Horse. When asked about this, Hartwig indicated they must have pressed the 'At Scene' button when they were in the general area, not at Snowberry Downs. They were in fact on Confederation Drive, not far from 33rd Street.

Cst. Hartwig's notes make no reference to the Snowberry Downs complainant, Trent Ewart. Hartwig had no recollection of any contact with Trent Ewart. Hartwig testified that his general practice in responding to a complaint of a disturbance would be to speak to the complainant and then do a floor by floor search for the person causing the disturbance.

There was a great deal of discussion about Jason Roy's condition on November 24/25, 1990. Hartwig's testimony indirectly touched on this issue. The temperature in the late evening of November 24 and the early morning of November 25 had dipped to minus 28.1 degrees Celsius. Hartwig stated that if he stopped someone in minus 28 degree weather, who was "really drunk" he would not simply let them leave as it would be unsafe for this person to be out in the cold. Based upon his practice, he agreed that if he let Jason Roy go after stopping him on November 24th, 1990, he must have concluded Roy was not so intoxicated as to be a danger to himself.

Hartwig's attention was drawn to Bruce Genaille's testimony that the officers who stopped him on November 24th indicated that they were checking into a disturbance at the 7-Eleven store and were looking for Neil Stonechild. He acknowledged that it was possible someone may have reported a complaint of a disturbance at the 7-Eleven store notwithstanding there was nothing in his notes or any dispatch record of such complaints. He also acknowledged that there was a possibility that there was some association between the disturbance at the 7-Eleven and Neil Stonechild. As I noted in my review of the evidence of Bruce Genaille, I am satisfied that the two constables did receive information that Neil Stonechild had caused a disturbance at the 7-Eleven store at Confederation Drive and 33rd Street, and they initiated a search for him. In the course of their search they stopped Genaille on Confederation Drive.

I found the following exchanges from his evidence revealing. The Constable was asked at page 8052 about the 7-Eleven disturbance and the conversation with Bruce Genaille:

> "Q. You've seen the copy of the statement taken from Bruce Genaille.
>
> A. I might have, yes.
>
> Q. You're aware of the text or the tenor of the testimony he gave before this Commission?
>
> A. No, I've actually kept myself out of the loop in that regard.
>
> Q. Well, I'm going to suggest to you then that his testimony was as follows, that he was on his way from Snowberry Downs where he lived just a short distance away to a friend's house, Sanderson, I believe, was the name of his friend, to play cards; that he got stopped as he walked along by two men in a police car, two uniformed men in a marked car.
>
> A. M'hm.
>
> Q. He was asked where he was going and he was asked who he was, and there was some doubt on the part of the police officers about his identity and they kept insisting to him or asking him, "Are you sure you're not Neil Stonechild?"
>
> A. M'hm.
>
> Q. He testified that he showed the officers ID in the name – his own name.
>
> A. M'hm.
>
> Q. And that he's not sure if they did an MDT – he didn't use that term –
>
> A. Right.
>
> Q. – but they did a check on him, but after they had his ID for a while they let him go on his way.
>
> A. Correct.
>
> Q. Okay. Now, he also said in his testimony and he told the police that when he was stopped by you, presumably –
>
> A. M'hm.
>
> Q. – as it was you and Constable Senger who did the check, that he was told that you guys were checking into a disturbance at the 7-Eleven store.
>
> A. Correct.

Q. Nothing in the records about a disturbance, but, again, my question to you is, is it possible that you and Constable Senger, in fact, were aware or had received information that somebody was causing a problem at the 7-Eleven store that didn't get phoned in and that you didn't record in your notebooks?

A. It's possible that somebody would have reported to us a third party complaint or a complaint of a disturbance at the 7-Eleven store, yes.

Q. Or that you could have just been in the area and somebody saw you and said, you know, there's a problem with this guy, he just left here, he's going that way, any number of things.

A. Correct, and that would be considered a non-view complaint.

Q. Okay. But the fact that it doesn't appear in the – any of the documentation and the only thing we know about it comes from Bruce Genaille doesn't mean it's – it could have happened.

A. It's possible, yes.

Q. And, indeed, could have been the reason why you stopped him that night.

A. No, I don't believe so. The timing involved would lead me to believe, as well as Mr. Genaille's alleged testimony, that we were looking for Neil Stonechild.

Q. Okay. Is it possible that there was some association between the disturbance at the 7-Eleven and Neil Stonechild, given that 7-Eleven is right across the street and there's some suggestion he was in there at some point that evening.

A. Yes.

Q. Okay. So you could have gotten information about Mr. Stonechild from two sources. There could have been information from Trent Ewart – or there was information from Trent Ewart, but you could have also gotten information on the fly, and I don't mean that in a disrespectful way –

A. M'hm.

Q. – but from a – just being in the area of the 7-Eleven.

A. It's possible.

Q. And, in fact, you were in the area of the 7-Eleven because we know you checked yourself at the scene at Snowberry Downs.

A. Correct.

Q. Which is basically across the street from the parking lot at the 7-Eleven.

A. It's – yeah, it's across the street and around the corner, yeah.

Q. Yeah, depending on which parking lot of that apartment complex you go into.

A. Correct.

Q. You're right there.

A. Yes."[151]

....

"Q. – because I know you don't remember, but it's quite possible that you had contact with Genaille, Bruce Genaille, before you had contact with Jason Roy or with Neil Stonechild, if you had contact with Neil that night.

A. I would have no reason to query Bruce Genaille if he produced ID. We were looking for Neil Stonechild.

Q. Yeah. Yeah. So you could have just queried him on the basis of what you got either from the 7-Eleven, if you got information from them about Neil Stonechild, and definitely we know that at 11 – I have trouble with that number – 11:51 you got information from Saskatoon Police Service that would cause you to be interested.

A. I'd think that would be very unlikely.

Q. What's unlikely about it?

A. It's possible that – it is possible that we would have run Genaille, Bruce later.

Q. M'hm.

A. It is extremely unlikely.

Q. But you just told me a few minutes ago that if you were satisfied with his ID and you were busy, you could easily make the decision that you didn't need to worry about it right now.

A. But then we wouldn't have run him at all.

Q. Well, then let's talk about that. You ran Trent Ewart at 12:30. Why would you run him?

A. For criminal intelligence purposes only.

Q. But he was a complainant in a disturbance that had come in at 11:51.

A. Right."[152]

The witness' answers demonstrate that the timing of the Genaille CPIC query was not proof of anything other than the fact that the query was made.

I found Hartwig's explanation that Ewart's name was processed at that time for "criminal intelligence" purposes, curious, to say the least, in light of the fact that the Constable reported they had cleared the Neil Stonechild complaint some 13 minutes earlier. What more were they looking for?

Cst. Hartwig agreed that a warrant for the arrest of Neil Stonechild was on the system on November 24/25, 1990. As a result, he testified that if he had encountered Neil Stonechild, he would have arrested him and taken him to detention.

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[151] Evidence of Lawrence Hartwig, Inquiry transcript, vol. 41 (March 16, 2004): 8052-8056

[152] Evidence of Lawrence Hartwig, Inquiry transcript, vol. 41 (March 16, 2004): 8058-8059

The dispatch records indicate that Csts. Hartwig and Senger were dispatched to a complaint from a person at #118 O'Regan Crescent at 12:18 a.m. on November 25th, 1990. Cst. Hartwig had no recollection of this event. From 12:30 a.m., the time of the CPIC query on Trent Ewart, to 1:39 a.m., there is no record of the activity of Cst. Hartwig and Cst. Senger. There are no dispatches during this time, no entries in their notebooks, and no CPIC queries. We do not know where they were or what they were doing.

Cst. Hartwig could not say when he learned of the discovery of Stonechild's frozen body. He speculated that he became aware shortly after the body was identified as news about the discovery of a frozen youth would spread fast. Cst. Hartwig indicated that there was locker room talk going around the police station in 1990 about the death of Neil Stonechild, including the suggestion that Stonechild's shoe was found in Gary Pratt's car. However, there was no suggestion of police involvement in his death.

Cst. Hartwig had no recollection of being contacted by Sgt. Jarvis with respect to an investigation into the death of Stonechild. He did acknowledge that it was possible someone spoke to him in regard to the investigation.

Cst. Hartwig recalled speaking to Cst. Ernie Louttit in early 1991 about the Stonechild investigation. He recalled that Cst. Louttit was upset with the way the investigation had been handled. He suggested that his discussions with Louttit took place after the March 4th, 1991 article appeared in the StarPhoenix. However, he also stated that Cst. Louttit told him he had information that he was working on at that time. Cst. Louttit's evidence was that he had dropped the matter after the StarPhoenix article appeared. When questioned further about his discussion with Ernie Louttit, Cst. Hartwig was asked whether he did anything to bring these concerns to his superiors. His response was that Cst. Louttit was in the process of doing that. This would indicate that the discussion took place prior to Cst. Louttit's meetings with S/Sgt. Bolton and Sgt. Jarvis on January 7, 2001.

On March 6, 2000, Cst. Hartwig was interviewed by RCMP Investigator Sgt. Ken Lyons. In a summary of this interview, Sgt. Lyons attributed the following statements to Cst. Hartwig: "All I know is the guys arrested him in the 3300 block, 33rd Street" … "They were going to a call of a suspicious person of a B. & E. in progress. They found Neil; he was drunk at the time." Cst. Hartwig agreed that "they" referred to Saskatoon Police Service officers. Cst. Hartwig also posed the following question in his interview with Sgt. Lyons: "Why would they have driven him around trying to find out who he was?" Cst. Hartwig testified that he told Sgt. Lyons this was information he had gleaned from the newspaper reports. There is no mention of this fact in Sgt. Lyons' summary. Later in his testimony, Cst. Hartwig stated that the newspaper article of February 22nd, 2000, together with whatever he may have heard on radio or television, formed the basis of the information he provided to Sgt. Lyons. Cst. Hartwig also testified that he read the name Tracy Lee Horse in the newspaper. When pressed in cross-examination that such information did not appear in newspaper reports, Cst. Hartwig responded that it was in media reports, maybe not newspaper reports. These details do not appear in any of the many media reports presented to the Inquiry.

Cst. Hartwig went to see Cst. Senger immediately following his taped interview with the RCMP on May 16th, 2000. At that time he believed it was possible that they had had Neil Stonechild in their custody. He claimed that was the result of Sgt. Lyons assertion that Stonechild had used the name Bruce Genaille. On cross-examination, after reviewing the transcript[153] of the RCMP interview, Cst. Hartwig acknowledged that the idea that Stonechild could have used Bruce Genaille's name to obstruct justice is something that he may have come up with on his own during that interview.

Cst. Hartwig testified that he believed that on November 24th, 1990, he would have recognized both the name Neil Stonechild and the individual. At the time of his testimony, his only independent recollection of dealing with Neil Stonechild was a street check in 1989. Police records[154] indicate that he also responded to a call on August 10th, 1990 in relation to an assault on Eddie Rushton. Sgt. Neil Wylie's notes indicate that Cst. Hartwig took a statement from Stonechild on that occasion. The name Neil Stonechild appears in Cst. Hartwig's notebook on August 10th, 1990. The police records also establish that Cst. Hartwig issued a traffic ticket to Neil Stonechild on October 21st, 1990. Cst. Hartwig claimed no recollection of either of these events. In his interview with Sgt. Lyons of the RCMP on May 7th, 2000, Cst. Hartwig stated that he knew the Stonechild family well, both Neil and his mother. In his subsequent interview with Sgt. Lyons on May 16th, 2000, he stated that he had previously arrested Neil and that he had dealt with his mom. He further stated Neil's mom had come to the realization that Neil needed help.

Cst. Hartwig was asked about his response to learning that Neil Stonechild had frozen to death. Of particular interest is the following testimony:

> "Q. Yeah. And my question for you was very simple. Would it not have occurred to you, do you think, doesn't common sense suggest that it would have flashed in your mind that, "Gee, that's the kid that I was looking for," and even more so, since you knew his mom, that you'd even think something like, you know, "Poor Stella," you know, he's –
>
> A. M'hm.
>
> Q. You know, "He was in a bit of trouble but he wasn't that bad a kid, he was only a kid." Don't you – wouldn't you have had those kinds of thoughts maybe?
>
> A. I may have, yes.
>
> Q. Okay. More than that you might have had them, you were a young constable with three years of service at that time. Your partner, Constable Senger was a rookie.
>
> A. Correct.
>
> Q. And he – the evidence before us suggest he's the one that took the call that the body had been found. Are you – can you say to me that you and he wouldn't have sort of reflected on the fact that you tried to find this kid?"
>
> A. Not at all.

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[153] Transcript of May 16, 2000 Interview of Cst. Hartwig by S/Sgt. Lyons, Inquiry exhibit P-184

[154] SIM System Records relating to Cst. Hartwig's contact with Stonechild, Inquiry exhibit P-184

> "Q. M'hm, and my question to you is how could you have not made the connection with that waste of such a young life in those circumstances with the call that you'd responded to on the 24th of November?
>
> A. I may have at the time but I do not recall."[155]

Cst. Hartwig stated that he prided himself on his memory. He was the only witness to testify at the hearings that disputed the accuracy of statements attributed to him in interviews conducted some three years earlier by the RCMP. He claimed to recall what was said in those interviews with striking particularity. At one point his attention was drawn to a summary of an interview he had with Sgt. Lyons. The summary attributed to Cst. Hartwig a reference to the 3300 Block 33rd Street. He denied that he had made such reference and indicated that he had referred to the intersection of Confederation and 33rd. This intersection, as he went on to acknowledge, is at the 3300 Block 33rd Street. In other words, there was no difference in substance, but he disputed the precise words used.

Cst. Hartwig appeared to me to be a bright and articulate person. Having heard Cst. Hartwig's testimony, having observed him on the stand, and having heard other witnesses describe him, it is inconceivable that, upon learning of Stonechild's death, he would not have recalled the fact that he and Cst. Senger were looking for Stonechild several days earlier. His response is in stark contrast to that of Sgt. Neil Wylie, who, upon learning of Stonechild's death recalled that Stonechild had been a potential witness to an assault several months earlier. Wylie located the records of the assault and brought the information to the investigating officer the day after the body was found. If Cst. Hartwig had nothing to hide, I would have expected no less from him.

Cst. Hartwig's assertion that he made no connection between the search for Stonechild and the discovery of his body days later, is also irreconcilable with Sgt. Jarvis's testimony that he contacted Cst. Hartwig and Cst. Senger about their possible involvement with Stonechild on November 24th. Cst. Hartwig acknowledged the possibility that Sgt. Jarvis had contacted him yet maintained he made no connection.

Cst. Hartwig's silence as to his search for Stonechild on November 24th is even more incredible in light of the fact that he discussed the death with Cst. Loutitt in early January 1991. He was aware that Cst. Loutitt had concerns about the circumstances surrounding Neil Stonechild's death, but did not disclose his search for Stonechild at a time close to his disappearance and death.

I cannot accept that Cst. Hartwig simply forgot about the search for Stonechild when he learned of the death, or that he failed to recognize the complaint might have some significance to the investigation into Stonechild's death. In all of the circumstances, his assertion that he did not recall what happened is simply not credible. I conclude that he recalled what happened, and his assertions are a deliberate deception designed to conceal his involvement.

Constable Bradley Senger[156]

Constable Bradley Senger joined the Saskatoon Police Service on January 2nd, 1990. Prior to that he had trained and worked as a psychiatric nurse. Cst. Senger completed his training at the police college in April of 1990. That was followed by a two week in-service after which he was assigned to Patrol.

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[155] Evidence of Cst. Hartwig, Inquiry transcript, vol. 41 (March 16, 2004): 8073-8075.

[156] Evidence of Cst. Bradley Senger, Inquiry transcript, vol. 43 (March 18, 2004): 8345-8501.

On November 24, 1990, Cst. Senger was still a probationary officer. He did not have a regular partner. At some point during the evening shift of November 24th, he was partnered with Cst. Larry Hartwig. On that shift, the two of them were dispatched to a complaint involving Neil Stonechild at Snowberry Downs.

Cst. Senger recorded the Ewart complaint involving Stonechild in his notebook. No other names are recorded. Cst. Senger testified that he had no recollection of the events of November 24/25, 1990, other than his involvement in notifying a woman of the death of her husband and two sons, which took place in the early hours of November 25, 1990. He denied transporting Neil Stonechild to the north industrial area. He also denied that he had any knowledge as to who did take Stonechild there.

Cst. Senger was working the day shift on November 29th, 1990, and Saskatoon Police Service Records indicate that he received the call advising that a body, which turned out to be the body of Neil Stonechild, had been found. Cst. Senger was not assigned to Communications Centre at that time, but believed that he was filling in for dispatch personnel's coffee breaks or lunch breaks at the time.

Like Cst. Hartwig, Cst. Senger attempted to draw some inferences as to what occurred from the CPIC records. He testified in examination-in-chief that a date of birth accompanying a name in a CPIC query would indicate the person was present when the CPIC query was conducted. The absence of a date of birth would indicate the person was not present. However, on cross-examination, he acknowledged that was not always the case and the presence or absence of a date of birth was not a reliable confirmation of whether or not the person was in the officer's presence when the CPIC query was conducted.

Cst. Senger had no recollection of being contacted by Sgt. Jarvis with respect to the death of Neil Stonechild. He acknowledged that as something that would likely stand out in his mind as a young police officer, but maintained that he could not recall any such contact.

I was struck by Senger's numerous responses that he had no recollection. He had no recollection of looking for Stonechild, no recollection of receiving the call reporting the finding of the body, no recollection of being contacted by Sgt. Jarvis, and no recollection of any press reports of the death in 1990 and 1991. It is not surprising that Senger, or any other officer, would not recall the details of a routine call ten or more years after the event. It is, however, difficult to accept that he would not have recalled the search for Stonechild when within a matter of days—on his next working shift—Stonechild's body was located. It is also difficult to accept that he did not recognize the potential significance of their earlier search for Stonechild to the investigation into the death of Stonechild. The discovery of Stonechild's frozen body made the call on November 24th anything but routine. I would expect it to impress the search for Stonechild in the memory of both Hartwig and Senger.

Cst. Senger was cross-examined by Mr. Halyk as to whether he made any connection between the fact that they searched for Neil Stonechild on November 24/25, 1990, and the location of Stonechild's frozen body on November 29th. The following exchange took place:

> "Q. Okay, so – so it's impossible to believe that you would not remember the name Stonechild come November 29th a few days later.

A. Why?

Q. Would you have forgotten that after spending that time searching for a Stonechild, and a few days later you wouldn't remember the name?

A. I have in my notes that I didn't have contact with him so it's just a call.

Q. But you know you're looking for a fellow by the name of Stonechild?

A. That's correct.

Q. Right.

A. Right.

Q. And I'm saying to you isn't it reasonable to assume that a few days later you would still remember that you were looking for Stonechild?

A. That I was still looking for him five days later?

Q. Yeah, that you had looked for him a few days earlier.

A. Sure, it could have been possible I might have remembered it on the 29th."[152]

…

"Q. Yeah, and so when you take a call about a death in the north end and you're going to say to us that you wouldn't have the curiosity as a police officer to say, by the way, who was found in the north end and what happened there?

A. I may have.

Q. Yeah, you may well have.

A. Yeah.

Q. And I'm suggesting to you, you may well have and you would have been told that they had identified this as Neil Stonechild. Would you expect so?

A. That may well have been, yes.

Q. And in fact you would expect that on parade, that after they had identified this person being found there deceased that they would have said in parade for information purposes to you as members of the police force, that the person who was found there was Stonechild and we're looking into the circumstances. Anybody who knows anything, let us know.

A. I don't know if they would have done that.

Q. But you're a police department. Isn't that the kind of information you'd want shared amongst the police force?

A. O, yeah, it should be information that should be shared amongst the police force, yes."

…

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[152] Evidence of Cst. Bradley Senger, Inquiry transcript, vol. 43 (March 18, 2004): 8485-8486.

"Q. Surely at some point in time you would have heard, as a police officer, as a police officer, that this was Neil Stonechild, and surely you would have, Officer, or should have connected that in your mind and said, by gosh, that's the young fellow we were out looking for. Gosh, if we would have found him we might have spared his life. I wonder what happened. Wouldn't you think that train of thought would go through your head?

A. Sure, it could have, yeah.

Q. But you don't remember it happening?

A. No."[158]

I share the skepticism expressed by Mr. Halyk that on November 30th Senger would not connect the name of the dead youth with the person he and Hartwig were told about twice on the late evening of November 24, 1990.

Cst. Senger struck me as an intelligent and articulate person. I do not believe an intelligent young officer, even one on probation, would have ignored all the information that was swirling about the Saskatoon Police Service as a result of the discovery of Stonechild's frozen body. He and Hartwig were searching for Stonechild when he was last observed at Snowberry Downs.

The two constables insist that they know nothing about the disappearance and death. If that is true, why would they not have contacted the investigating officer when they returned to work on November 29th, the very day the body was discovered? I would fully expect them to have gone to the investigating officer to give him a full report about what they knew, including the 7-Eleven disturbance as well as the Snowberry Downs disturbance.

Why would Senger keep quiet? I can only conclude that he chose to conceal his involvement with Stonechild on November 24/25.

There is one other matter that emerged in the testimony of Senger that bears comment. In an interview with Sgt. Lerat of the RCMP, on December 12, 2001, Senger admitted that he falsified a breathalyzer reading. He was the technician responsible for administrating a breathalyzer test. Senger lowered the reading on the second test in order to avoid the necessity of administering a third test. The person was subsequently charged and Senger did not know the disposition of the charge. If he was required to testify in court, he stated he would have asked that the Certificate of Analysis be withdrawn.

Cst. Senger voluntarily confessed to this serious breach of duty. That does not lessen its significance. It casts a large shadow on his integrity and establishes that he is capable of sacrificing duty to indolence. I have no doubt officers are frequently tempted to take short cuts and to "bend" the rules in the performance of their duty. It is a temptation that must be resisted, and is resisted by the great majority of officers.

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[158] Evidence of Cst. Bradley Senger, Inquiry transcript, vol. 43 (March 18, 2004): 8488-8489

5 | The Investigation by Saskatoon Police Service

Under the second branch of the Terms of Reference, I am charged with the responsibility to inquire into the conduct of the Saskatoon Police Service investigation into the death of Neil Stonechild. In this section I review the evidence of the many past and present members of the Saskatoon Police Service who had evidence to offer concerning the conduct of the investigation and the questions that were raised about the investigation after it was concluded. This section summarizes the evidence of those police witnesses who were directly and indirectly involved with or concerned about the investigation, and those who were not but perhaps should have been.

The Saskatoon Police Service Investigation File

When the RCMP began its investigation into the death of Neil Stonechild, a search was conducted for the Saskatoon Police Service investigation file that contained the reports of the officers who attended the scene of Stonechild's death and the reports of the officer assigned to investigate the death. It was determined that the official copy of this file was destroyed. All that remained of the official Saskatoon Police Service file in relation to the investigation of Stonechild's death was very basic indexing information about the file that was stored on the SIM System.[159] The text of the reports filed by the investigating officers was not stored on the SIM System. It was not until 1992 that the Saskatoon Police Service began to store the full text of investigation files on the SIM System.

The evidence established that the paper file was destroyed in 1998. This was not in accordance with the file retention policy[160] of the Saskatoon Police Service, developed in 1993, which required all operational reports originating prior to 1992 to be maintained for a minimum of ten years. Deputy Chief Dan Wiks testified that in 1998 Saskatoon Police Service departed from the policy to free up badly needed storage space for renovations.[161] They required extra space, and a decision was made to revert to the file retention requirements under *The Police Act, 1990*. Under the requirements of *The Police Act, 1990*, the Stonechild Investigation file had to be retained for only three years as it was classified as a sudden death, not a homicide. If it had been classified as a homicide the file would not have been destroyed.

However, in 2001, Cst. Ernie Louttit of the Saskatoon Police Service came forward with a copy of the file that he had made in early December of 1990. The file was made an Inquiry exhibit.[162] This file contained the written reports from the officers attending the scene of Stonechild's death (Rene Lagimodiere, Robert Morton) and the written reports of Keith Jarvis, the Investigator assigned to the file. While the final report of Keith Jarvis, dated December 5, 1990, states that the file is "Concluded at this time", questions were raised as to whether or not this was a complete copy of the Saskatoon Police Service investigation file. The computer records of the Saskatoon Police Service address this point.

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[159] In 1990, the SIM System was used simply as an electronic index of occurrence reports that would refer the user to a paper file. This electronic index would contain only basic information about the file such as the time, place, and date of occurrence; the names, addresses, and dates of birth of persons involved; the name of the officer who submitted the original report; and the name of the Investigator assigned to the file. See Report of Deputy Chief Wiks, Inquiry exhibit P-144.2, and see also Evidence of Jack Heiser, Inquiry transcript, vol. 17 (October 10, 2003): 3137-3216

[160] Report of Deputy Chief Wiks, Inquiry exhibit P-144: 33

[161] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (March 8, 2004): 6578-6579

[162] Saskatoon Police Service Investigation File, Inquiry exhibit P-61 reproduced in this Report as Appendix "R"

The information technology specialists with the Saskatoon Police Service were able to supply the Inquiry with a computer printout log for the Stonechild file. This computer log states that the file was concluded and last updated on December 5, 1990, which was the date of the final report of Keith Jarvis.[163] Deputy Chief Dan Wiks testified that if there were any investigation reports on the Stonechild file after December 5, 1990, he would assume that the log would not contain "December 5, 1990" as the date of the last update and conclusion of the file.[164]

Cst. Louttit also testified that, in 1992 or 1993, he returned to the Central Records department of the Saskatoon Police Service to review the Stonechild file. Cst. Louttit stated that he was certain that there were no new investigation reports relating to the Stonechild matter on the file at that time.[165] The only new material that Cst. Louttit observed on the file was the Stonechild Toxicology Report, the Stonechild Autopsy Report, and a report that appeared to be related to another file. I am satisfied based on the evidence of S/Sgt. Murray Zoorkan of the Saskatoon Police Service that the report observed by Cst. Louttit did indeed belong to another investigation and was accidentally misfiled on the Stonechild file.[166] The RCMP obtained copies of the Stonechild Autopsy Report and the Toxicology Report from the Coroner, Dr. Fern, and they were made exhibits at the Inquiry.[167]

I conclude, therefore, that the Inquiry has the complete copy of the Saskatoon Police Service paper file relating to the death of Neil Stonechild. I address the content of this file through my summaries of the evidence of the police officers who contributed reports to the file. I now turn to the evidence of those officers and the other members of the Saskatoon Police Service who had a connection to the investigation into the death of Neil Stonechild.

Rene Lagimodiere[168]

Rene Lagimodiere joined the Saskatoon Police Service in December of 1974. In November of 1990, he was a Uniform Officer in the Patrol Division. He was the first officer dispatched to the scene where the body of Neil Stonechild was located.

Lagimodiere described the scene. He stated that he was able to recall a reasonable amount of detail without reference to his notebook or the written report he prepared for the investigation file. However, he had reviewed both the notebook[169] and written report[170] prior to testifying. Lagimodiere was dispatched at 12:54 p.m. on November 29, 1990, and arrived at the scene at 12:58. He was directed to the body by two men working in the area. Lagimodiere approached the body from the south and confirmed that the person was dead. He then contacted a dispatcher, likely from his portable radio.

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[163] Computer Printout Log re Stonechild File, Inquiry exhibit P-143 and Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 34 (January 9, 2004): 6574

[164] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 38 (March 11, 2004): 7335-7336

[165] Evidence of Cst. Ernie Louttit, Inquiry transcript, vol. 16 (October 9, 2003): 2858

[166] Evidence of S/Sgt. Murray Zoorkan, Inquiry transcript, vol. 31 (January 6, 2004): 5935-5936

[167] Toxicology Report, Inquiry exhibit P-50; and Autopsy Report, Inquiry exhibit P-49. The Autopsy Report is reproduced in this Report as Appendix "N"

[168] Evidence of Rene Lagimodiere, Inquiry transcript, vol. 9/10/11 (September 22/23/24, 2003): 1652-1697 and 1855-1954

[169] Notebook of Rene Lagimodiere, Inquiry exhibit P-43

[170] Occurrence Report by Rene Lagimodiere, Inquiry exhibit P-44. Lagimodiere's Report is also contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

Lagimodiere testified that he had previously attended sudden death scenes. He indicated the responsibility of the first attending officer is to survey the scene and determine if there are obvious signs of foul play. Such information would be relayed to the dispatcher. The dispatcher would then notify the Patrol Sergeant.

Lagimodiere identified footprints made by the deceased and followed them back to a gravel parking lot off 57th Street. He testified that there was no indication of the deceased's footprints beyond the gravel parking lot, although, it does not appear that any search was made. He testified that "there were no other footprints leading to the body other than the fellow that went to check".[171]

Lagimodiere testified the tracks went north from where the body was located to a small ravine. The impressions in the snow, at this point, indicated the deceased had fallen before proceeding south to where the body was located. On cross-examination, he testified that he formed the opinion that the deceased had been intoxicated and was stumbling around in the field. Later in his testimony, he acknowledged that the track of the footprints from the south were relatively straight.

Lagimodiere's report indicates that he called for an Identification Section Officer and the Coroner to attend at 13:04. He then took steps to secure the scene. Lagimodiere's written report indicates that Sgt. Morton and Cst. Middleton, from the Identification Section, arrived at 13:43, and Dr. Fern, the Coroner, arrived at 13:57. Lagimodiere's report records that Dr. Fern indicated that he believed the body had been there for several days. Lagimodiere also testified he called for the Canine Division to attend the scene to search for the missing shoe. The search did not turn up the shoe. Lagimodiere did not recall Patrol Sgt. Michael Petty being at the scene, and there is no mention of him in his report. However, the Investigation Report of Morton indicates Petty was at the scene.[172]

Lagimodiere testified that he did not call an Investigator to the scene as that was the responsibility of the Patrol Sergeant. However, he also stated that there was no reason to call an Investigator, because there were no obvious signs of foul play. Lagimodiere acknowledged, on cross-examination, that he had wondered how Stonechild got there, but maintained there was no cause for believing there had been foul play. On cross-examination, Lagimodiere also agreed that locating the body was an "unusual situation and an unusual location",[173] and that it could have been foul play as he did not know how the body got there.[174] Lagimodiere's initial view that there was no sign of foul play was reflected in his written report, and this may explain why the file was assigned to the Morality Unit for follow-up, as opposed to the Major Crimes Unit.[175]

Lagimodiere remained on the scene until the body was removed. After the body was removed, Lagimodiere returned to the station and dictated his report at 6:40 p.m. In the report Lagimodiere describes Stonechild's clothing and observes that the footprints appeared to be "several days old". Lagimodiere does not recall having any further involvement with the Stonechild file after he submitted his written report. He did not recall having any contact with an Investigator, though he acknowledges that he may have had such contact.

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[171] Evidence of Rene Lagimodiere, Inquiry transcript, vol. 9 (September 22, 2003): 1667

[172] Investigation Report of Robert Morton, Inquiry exhibit P-57. Morton's Report is also contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[173] Evidence of Rene Lagimodiere, Inquiry transcript, vol. 11 (September 24, 2003): 1928

[174] Evidence of Rene Lagimodiere, Inquiry transcript, vol. 11 (September 24, 2003): 1934

[175] Two former officers testified that upon reviewing Lagimodiere's written report (just prior to testifying), they felt the file should have been sent to the Morality Section: Evidence of Raymond Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2593; Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3253

Other police witnesses were questioned about Lagimodiere's handling of the scene as a first responder. This evidence for the most part suggests that Lagimodiere met his responsibilities as a first responder[176], and that his supervisory role over the scene investigation passed to the Patrol Sergeant, Michael Petty, when Petty arrived at the scene. There was a suggestion made that it was the responsibility of the first responder or the Patrol Sergeant to notify the Duty Inspector that a body had been located. This does not appear to have occurred.[177] The significance of this evidence is that Dave Wilton, the Duty Inspector on November 29, 1990, testified that if he would have been aware of the discovery of a body in such circumstances, he would have ensured that an Investigator attend the scene, regardless of whether or not this required overtime pay.[178] However, as discussed below, the responsibility for ensuring an Investigator attended the scene appears to have rested on the Patrol Sergeant, not the first responder.

Lagimodiere was also questioned by Counsel about comments he had earlier provided to the RCMP regarding Cst. Hartwig. In an interview with the RCMP, Lagimodiere referred to Cst. Hartwig as a very aggressive individual who suffered from "small man syndrome". Lagimodiere testified at the Inquiry that Cst. Hartwig's reputation within the Police Service is to charge if he sees an offence, and arrest if he sees someone who is to be arrested.[179]

Staff Sergeant Michael Petty[180]

Michael Petty is currently a staff sergeant with the Saskatoon Police Service in charge of Identification Services. He joined the Saskatoon Police Service in 1968. Between 1988 and 1997, Michael Petty was a Patrol Sergeant in charge of the West Side District. As noted, a Patrol Sergeant is the senior officer on patrol during a shift. The job of a Patrol Sergeant includes the responsibility to co-ordinate the efforts of constables at major incidents such as crimes scenes or the discovery of a body, and to determine what, if any, additional assistance is needed at the scene, such as Identification personnel and investigators.

S/Sgt. Petty recalled attending the scene where the body of Neil Stonechild was located. He attended the scene as Patrol Sergeant, but did not file any report. He testified that it is not typical for the Patrol Sergeant to file a report. The Occurrence Report is normally left by the first officer on the scene.

S/Sgt. Petty acknowledged that his role at the scene was to make sure everything is done that should be done. He also acknowledged that it is his job to see that additional assistance is called, such as an Identification Officer and an Investigator. Petty testified that, although he had no specific recollection of doing so, it would be normal for him to report the circumstances to the Platoon Staff Sergeant on duty and possibly the Duty Officer, if the Staff Sergeant was not available. He believed the policy at that time was to notify the Morality Unit or Major Crimes Unit of all sudden deaths. He indicated that while he would notify these investigative units that a body had been found, the Staff Sergeant in charge of Morality and/or Major Crimes would probably get the first call and make the decision as to whether to send somebody to the scene or just assign the file afterwards. He further testified that, in this particular circumstance, he would not have been unduly concerned if an Investigator did not show up. The circumstances did not raise issues with him as to how the deceased had got to the location. He was satisfied that the death was accidental.

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[176] Evidence of Joe Penkala, Inquiry transcript, vol. 20 (October 16, 2003): 3854; Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6411. Bruce Bolton did testify that if he was the officer in charge at the scene he would have conducted a thorough investigation of the area within a block or so of where the body was found to see if the shoe could be located: Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 20, 2003): 3254

[177] Evidence of Dave Wilton, Inquiry transcript, vol. 38 (March 11, 2004): 7387-7391

[178] Evidence of Dave Wilton, Inquiry transcript, vol. 38 (March 11, 2004): 7388

[179] Evidnece of Rene Lagimodiere, Inquiry transcript, vol. 11 (September 24, 2003): 1947

[180] Evidence of S/Sgt. Michael Petty, Inquiry transcript, vol. 13 (October 6, 2003): 2484-2531

S/Sgt. Petty's attitude is illustrated by an exchange with Mr. Halyk, counsel for the FSIN.

> "Q. Did you make a determination where he had come from, where he had been before you came to your conclusion?
>
> A. You're asking me questions that you should be asking of an Investigator. I wasn't the Investigator at the scene.
>
> Q. No, but you indicated that you had some power and control over what happened at the scene and whether –
>
> A. I had some power and control over the constables at the scene, yes.
>
> Q. Yes. And you had no concern that there was no Investigator at the scene you said?
>
> A. I had no concern at the scene.
>
> Q. And yet you formed the opinion that there was nothing suspicious about the death; it was just a simple freezing?
>
> A. In the – in conversations, I guess they would have been, with the people I called to the scene for that purpose, no, I had no concerns.
>
> Q. You had no concerns. And did you see any evidence of blood in the snow around the body?
>
> A. No.
>
> Q. Did you look for any?
>
> A. No.
>
> Q. Did you have anybody report to you whether there was any?
>
> A. No.
>
> Q. And did you know if there was any examination, or any intention of examining the clothes to see if there was any indication of any blood, bodily fluids, fiber, hair; did you ask any of that stuff be done, before you came to your conclusion?
>
> A. You seem to be – have the impression that my conclusion closed the case. It didn't. My conclusions was, is it safe to leave the scene at this point. All

> those things were – may be subsequent – certainly after the clothing had thawed out, the investigators may have requested all manner of different things. But at the scene, no, I wouldn't have done that.
>
> Q. Well, did you, as a Patrol Sergeant, request any follow-up with the investigation, or suggest any?
>
> A. No.
>
> Q. Did you follow it up in any way?
>
> A. No."[181]

I find S/Sgt. Petty's opinion that the death was obviously accidental and did not require further investigation at the scene, to be untenable. Further, it was contradicted by the evidence of a number of other police witnesses.

Robert Morton, the Identification Officer who attended the scene, noted in his Investigation Report that the file required investigation as to why an individual would be wandering in a remote business area of town.[182] On cross-examination, S/Sgt. Petty himself acknowledged that he could only recall two freezing deaths in his 35 years of service that were in the outskirts of the city.

Dave Wilton, who was the Duty Inspector on November 29, 1990, testified that he would have called out an Investigator in the circumstances even if overtime pay was required. Wilton stated that he would have expected to have been notified by one of the officers at the scene that a body had been found. He was not.[183]

Ray Pfeil testified that if he was Patrol Sergeant called to the scene where a frozen body was found in a field, he would in all cases call in an Investigator. In his experience the Investigator would attend.[184]

Bruce Bolton testified that in circumstances where a body is found frozen in a field in the north industrial area of the city, an Investigator either from Morality or Major Crimes should have been dispatched to attend at the scene.[185] If no one was on duty, one could be called out. The Investigator who would be assigned to the file should be in on the "ground floor".

Deputy Chief Dan Wiks testified that it was the responsibility of the Patrol Sergeant to assess the circumstances to determine whether an Investigator was required. In Wiks' view, the circumstances of the Stonechild scene of death required the Patrol Sergeant to call out an Investigator. If an Investigator was not available, then Wiks testified that the Patrol Sergeant's job was to take over the role of Investigator.[186]

S/Sgt. Petty testified that he did not conduct any investigation, as he did not view this as part of his function. He understood his role was simply to determine what facilities or resources were needed at the scene. That was not good enough.

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[181] Evidence of S/Sgt. Michael Petty, Inquiry transcript, vol. 13 (October 6, 2003): 2518-2520

[182] Investigation Report of Robert Morton, Inquiry exhibit P-57: 3. Morton's Investigation Report is also contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[183] Evidence of Dave Wilton, Inquiry transcript, vol. 38 (March 11, 2004): 7383-7391

[184] Evidence of Ray Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2554

[185] Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3251-3252

[186] Evidence of Deputy Chief Dan Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6414-6417

Sergeant Gregory Robert[187]

Sergeant Robert joined Saskatoon Police Service in 1984, following six years of service with the RCMP. From 1987 to 1992, he was assigned to the Canine Unit. Sgt. Robert attended the scene where the body of Stonechild was discovered with his dog. He had no recollection of attending the scene prior to reviewing the police reports. He believes he was called to the scene by the Patrol Sergeant, Michael Petty.

Sgt. Robert testified that his role was to use the dog to search for the missing shoe and any other evidence that may be in the area. He did not conduct the search until after the body was removed. After the body was removed, the dog searched the field for any human scent related articles or articles foreign to the area. He testified that he searched the lot in which the body was found, bounded by the streets. The search was done very quickly, because they were looking for a large article.

The dog did not locate anything. Sgt. Robert explained the problem with such a search:

> "Well after reviewing the reports I noted that I had attended to the scene while the body was still there. I believe that Staff Sergeant, or then Sergeant Mike Petty was the one that requested I attend the scene. After attending there I advised him that I would do a search for a shoe and any other evidence that may be related to the case, but I requested that they examine the area directly around the body themselves and have the body removed prior to me doing the search. And my reasons for that were two-fold; I didn't want to have my police service dog or myself destroy any evidence that may have been around the body and I did not know how my service dog would react to the body.
>
> Q. Now I want to come back to what search was done, but was any – were you requested to try and retrace the path, the origin of the deceased?
>
> A. Not to my knowledge, no, I was not.
>
> Q. Is that something that you could have done at that time?
>
> A. I wouldn't have used the service dog for that. Our dogs are trained to the Royal Canadian Mounted Police course training standard and when we go to scenes the dog, in a tracking scenario, would pursue the freshest human scent. There would be no human scent there left from Mr. Stonechild. The only fresh human scent around that area would have been the police and any witnesses that may have been around the body."[188]

No attempt was made to use the dog to retrace the route taken by Stonechild. Sgt. Robert testified that this would not have been possible as the dog was trained only to follow the freshest scent.

Sgt. Robert did not file a report as the search was unsuccessful.

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[187] Evidence of Gregory Robert, Inquiry transcript, vol. 14 (October 7, 2003): 2653-2698

[188] Evidence of Gregory Robert, Inquiry transcript, vol. 14 (October 7, 2003): 2656-2657

Robert Morton[189]

Robert Morton served as a member of the Saskatoon Police Service for 33½ years. He retired in February of 2000. In 1985, he was posted to the Identification Section. He attended an Identification Methods and Techniques Course in Ottawa for approximately two months in 1985. By the time of his retirement he had obtained the rank of Staff Sergeant.

Robert Morton was the identification officer dispatched on November 29, 1990, to the scene where the body of Neil Stonechild was located. Morton has no independent recollection of attending the scene, other than his recollection of seeing television clips taken at the scene. He testified that the identification officers function at the scene was the collection of evidence, including taking photographs and making measurements. The body is also examined for evidence of foul play, but this is usually done after the Coroner arrives. It is also the function of the Identification Section to attempt to determine the identity of the deceased.

Sgt. Morton, as he then was, filed an Investigation Report in respect of his attendance at the scene of where the body of Stonechild was located.[190] The report is dated November 29, 1990, and indicates it was received at 8:55 p.m. Morton's testimony as to his involvement was based on his review of the report.

He was called to the scene at 1:10 p.m. He noted that at the time of his arrival Cst. Lagimodiere, Sgt. Michael Petty, and Cst. Middleton were also at the scene. Sgt. Morton took photographs and video of the scene.

He records in his Report that there were several sets of foot tracks in the snow going towards the body. The tracks were accounted for by the civilians who found the body and Cst. Lagimodiere. He noted there was a track leading from between the buildings on 57th Street and going north into the vacant lot area that could be directly tied to the deceased. These footprints had been slightly blown over which indicated to him that they were not fresh footprints.

Sgt. Morton's report also listed the clothing worn by the deceased. Neil Stonechild was wearing a blue cloth baseball type jacket. Under the jacket he wore a red lumberjack shirt and under that a white T-shirt. He was also wearing a pair of light blue jeans. Under the jeans he was wearing a pair of red and white spandex type thigh length shorts and under those a pair of normal underwear. On his left foot was a running shoe. The laces were undone. There was also a white sport sock on the left foot. The right running shoe was missing. The only thing on the right foot was a white sport sock. Sgt. Morton recorded his observation of the right foot as follows:

> "The sock was pulled down and bunched at the top in a fashion that would indicate that he had been walking with just his sock foot. The heel area of the sock was completely worn out and visible on the actual heel of the body was what appeared to be dirt etc, which left me to believe that he had been walking for some time without a running shoe on that foot."[191]

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[189] Evidence of Robert Morton, Inquiry transcript, vol. 13 (October 6, 2003): 2338-2483

[190] Investigation Report of Robert Morton, Inquiry exhibit P-57. Morton's Report is also contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[191] Investigation Report of Robert Morton, Inquiry exhibit P-57: 2

The only other observations made at the scene by Sgt. Morton were "two scrapes across the bridge of the nose and a small cut to the lower lip." Sgt. Morton testified that the identification officer had authority to request that an Investigator come to the scene. He made no such request.

Sgt. Morton's report indicates the body was removed at 3:20 p.m. and taken to St. Paul's Hospital morgue. Cst. John Middleton accompanied the body to the morgue. Sgt. Morton explained that the body is treated as evidence, and the person that accompanies the body to the morgue is to maintain continuity of the evidence.

Sgt. Morton attended the morgue at 3:45 p.m. to seize the clothing. The blue jacket, red lumber jacket, T-shirt, both socks and the running shoe were seized at that time. The blue jeans, the spandex type shorts and the underwear shorts were left as it was impossible to remove them from the frozen body.

Although Sgt. Morton seized Stonechild's clothing at the morgue, he recorded no observation other than the fact that a stone was found in the left running shoe, and that it appeared to have been there for some time as it had caused a noticeable depression into the foot. Curiously, Sgt. Morton does not recall and did not record making any observation of the wear on the left sock. He testified that he could only assume that the wear on the sock was reasonably normal.

Sgt. Morton stored the clothing as a police exhibit, but he did not send the clothing to the Regina Crime Lab for examination. He testified that the Identification Officer or the Investigator could decide to send the clothing to the Crime Lab. Sgt. Morton's practice was to send all exhibits to the Crime Lab in cases of obvious homicides to determine if there was any evidence of blood, fibres, hairs, or other such evidence.

When the clothing was removed at the morgue, some pictures and papers were located in Stonechild's right rear pant pocket. A note on one of the photographs indicated it was to a person by the name of Neil. Two phone numbers were also recorded on a piece of paper. Sgt. Morton left the morgue at 4:30 p.m. after being advised by Dr. Adolph that the body would be locked in the room while it thawed, and the Identification Section would be notified when the autopsy was to be performed.

Sgt. Morton and Cst. Middleton returned to the police station and made a preliminary identification of the body. Based on the "NS" tattoo and the photographs indicating a first name of 'Neil', Cst. Middleton searched the identification card system for persons with the last name starting with 'S' and a first name of 'Neil'. Cst. Middleton came up with the name Neil Christopher Stonechild. Based on the photographs and the description of tattoos, he determined a possible identity as Neil Stonechild.

Sgt. Morton returned to the morgue at 8:10 with Morality Investigator Sgt. Keith Jarvis to obtain a thumb print from Stonechild. A positive identification of the body was made based on the comparison of the thumb print with records maintained by the Saskatoon Police Service. Sgt. Morton then left the morgue at 8:20 p.m. and dictated his Investigation Report shortly before 9:00 p.m.

Sgt. Morton attended the autopsy on November 30th, 1990, and took a series of photographs. However, he did not file any report of his attendance at the autopsy.

SIM records indicate that Stonechild's clothing and belongings were destroyed on January 12, 1993, at the request of Sgt. Jarvis.[192] Sgt. Morton testified that the clothing would be turned over to the family if they received a request for the clothing from the family. Sgt. Morton had no recollection of receiving such a request, nor was there an indication of the request in the report. I note that the procedure that Robert Morton followed in destroying Stonechild's clothing was not in accordance with the procedure described by former Superintendent Frank Simpson of the Saskatoon Police Service. Simpson worked for a number of years in the Identification Section. He was questioned as to practice and policy with respect to destruction of exhibits, in particular clothing. He stated that if the investigation had been concluded, the clothing would normally be returned to the family. It was always his practice to obtain clearance from the family before destroying clothing. He felt this practice was carried out by most of the identification officers. However, his experience in the Identification Section was in the 60's and 70's. He could not say whether the practice had changed.[193]

While Sgt. Morton commented in his Investigation Report of November 29, 1990, that the preliminary and limited physical examination of the frozen body at the scene did not yield any obvious signs of foul play, and while he did not send the clothing to the Crime Lab, his actions at the scene and afterwards demonstrate that he prudently treated the matter as a suspicious death. He took a detailed video and a number of photographs of the scene. He had Cst. Middleton accompany the body to the morgue to preserve the continuity of evidence. Morton attended the autopsy, which he indicated that he would only do in situations where there was some evidence of foul play. He also arranged to have blood samples sent to the RCMP Crime Lab.[194] There was evidence that blood samples could be sent to the Provincial Lab if there was no indication of foul play.[195]

I am satisfied from the evidence that Sgt. Morton adequately discharged his responsibility as the Identification Officer, which was to provide support to the Investigator through the collection and preservation of evidence. Sgt. Morton, in the final remarks of his November 29, 1990 Report, correctly articulated the crucial question that required further investigation, and appropriately identified where the responsibility for that investigation lay:

> "All information pertaining to this case has been turned over to **Sgt. JARVIS** for purposes of notifying next of kin and **trying to determine why this individual would have been out into** [sic] **that basically remote business area of town.**"[196] [Emphasis added]

Keith Jarvis[197]

Keith Jarvis joined the Saskatoon Police Service in 1966 and retired in August of 1993 with the rank of Staff Sergeant. During his service, he worked in a number of sections, including patrol, communications, detention and plainclothes investigations.

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[192] SIM Incident Report, Inquiry exhibit P-59

[193] Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3621-3622

[194] This is noted in Sgt. Keith Jarvis' Investigation Report of December 5, 1990 Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[195] Evidence of Deputy Chief Wiks, Inquiry transcript, vol. 33 (January 9, 2004): 6428

[196] Investigation Report of Robert Morton, Inquiry exhibit P-57: 3

[197] Evidence of Keith Jarvis, Inquiry transcript, vol. 23-24 (October 23-24, 2003): 4429-4611 & vols. 25-27 (November 24-26, 2003): 4646-5332

In 1979, he was promoted from Constable to Corporal and was assigned to the Youth Section as a Plainclothes Investigator. In 1983, he was promoted to Sergeant. In 1988, Jarvis was assigned to the Morality Division where he remained until early 1991. His employee profile, referred to as a "tombstone", was entered into evidence.[198] It lists the numerous training courses he took over the course of his career. I will come back to one important part of his training.

On November 29th, 1990, Sgt. Jarvis was working the evening shift from 3:00 p.m. until 3:00 a.m. During that shift, he was assigned the investigation into the death of Neil Stonechild. He detailed the process followed when a criminal investigation file was assigned to a Morality Investigator:

> "Q. Okay. And typically how was it assigned to you? Would that have been done verbally by the staff sergeant or –
>
> A. No, sir, the – the file would be typed up in Central Records, it would go through the staff sergeant reader who would peruse the file, make sure that it made sense, then be sent onto the appropriate division, be it Morality or Detectives. It would go to the morality staff sergeant who would, in turn, look at the file, decide who should investigate it, who was available to investigate it. It would be assigned to a member of the Morality Section. The file itself would also be entered into a log book that was maintained by the morality staff sergeant. A control copy of that file would also be maintained or kept by the staff sergeant in charge and filed in his filing cabinet. The file would also be diary dated in his log."[199]

He did not attend the death scene. There was no suggestion that he was called to the scene. In fact, he was assigned the investigation after the body had already been removed from the scene and transported to St. Paul's Hospital.

At approximately 8:10 p.m., Sgt. Jarvis attended the morgue at St. Paul's Hospital with Sgt. Bob Morton of the Identification Section to confirm the identity of the deceased. A thumbprint was taken, but Sgt. Jarvis did not examine the body. His explanation for this omission was that he had no medical training. This was one of the many curious statements made by Jarvis during his appearance before the Commission. As a trained and experienced investigating Officer he was quite capable of examining the body as it lay disrobed on the autopsy table.

The thumbprint confirmed the identity of Neil Stonechild. At 8:40 p.m., Sgt. Jarvis contacted the coroner, Dr. Fern, and advised him of the identification of the deceased. He then undertook to notify the next of kin. At 9:30 p.m., he contacted Velma Blackey, Neil Stonechild's aunt. She provided him with contact information for Stella Stonechild, the deceased's mother. At 9:45 p.m., Sgt. Jarvis attended the residence of Mrs. Stonechild to notify her of the death of her son. He learned from the family that Neil was last seen on November 24th, 1990, at approximately 9:00 p.m. At that time, he was with Jason Roy and was going to see Eddie Rushton.

At approximately 10:30 p.m., Sgt. Jarvis learned that Neil Stonechild had been in open-custody at a community home operated by Gary and Pat Pickard. He contacted Pat Pickard and was advised that she had last spoken to the deceased at approximately 10:00 p.m. on the evening of November 24th, and that he had indicated his intention to return to open-custody the following day. Pickard provided Jarvis with the names Shannon Nowaselski, Eddie Rushton, Jason Roy, Shawn Draper, and Dennis (Dewie) McCallum as persons who may have had contact with Neil while he was unlawfully at large from the group home.

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[198] Employee Profile for Keith Jarvis, Inquiry exhibit P-114

[199] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4440-4441

At approximately midnight on November 29th, Sgt. Jarvis filed an Investigative Report detailing his activities and the information obtained that day.[200]

On Friday, November 30th, 1990, Sgt. Jarvis again worked the evening shift from 3:00 p.m. to 3:00 a.m. At 3:00 p.m., he spoke to Shannon Nowaselski and was advised that she had not seen Neil for approximately two weeks. At approximately 4:00 p.m., Sgt. Jarvis spoke to Trevor Nowaselski who indicated he had seen Neil on/or about November 26th at approximately 3:00 p.m. At that time, Neil was with a friend whose name Nowaselski did not recall. Nowaselski did recall that they were catching a bus.

Around this time, Sgt. Jarvis also received information suggesting the possible involvement of Danny and Gary Pratt in the death of Neil Stonechild. A Crime Stoppers' tip was received at 4:42 p.m., suggesting that Neil was taken to the area of 57th Street and beaten and left there by Danny and Gary Pratt. The tip suggested that the reason for the beating was that Neil was "fooling" with Gary Pratt's girlfriend. The evidence presented at the Inquiry indicates there was no truth to this report. However, there was no indication that Jarvis took any steps to confirm or refute this report.

Sgt. Jarvis also received an important piece of information from Cst. Wylie, during this period, which suggested another possible motive for Gary Pratt's involvement in the death of Neil Stonechild. Wylie recalled an incident from August 1990 in which the Pratt's had been involved in an assault on Eddie Rushton. Charges were laid against Gary Pratt and Neil Stonechild was to testify against him. Wylie relayed these particulars to Sgt. Jarvis. Sgt. Jarvis recorded the occurrence number, but amazingly, he never looked at the file. He was asked for an explanation:

> "Q. Okay. Would you not have been interested in the details of that occurrence in light of the information Constable Wylie provided you?
>
> A. No, sir. This was something that had happened some time before. It was already before the courts.
>
> Q. But I gather what he's indicated to you is that there had been some dispute or potential dispute between GP and the deceased.
>
> A. That's correct.
>
> Q. And you're saying that wasn't of interest, the details of that situation?
>
> A. At that time it didn't seem to be, I guess, sir."[201]

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[200] The Investigation Reports of Keith Jarvis are contained in the Saskatoon Police Service Investigation File, Inquiry exhibit P-61, which is reproduced in this Report as Appendix "R"

[201] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4465-4466. "GP" in the transcript refers to Gary Pratt. At the beginning of the hearings, a concern was identified that Mr. Pratt may have been a youth in 1990. *The Young Offenders Act*, R.S.C. 1985, C. Y-1 would have prohibited the publication of Mr. Pratt's identity if he had been a youth at the time. It was subsequently determined that he was an adult.

Even more interesting was Sgt. Jarvis's admission that he had some involvement in the Pratt/Rushton incident that Wylie brought to his attention.[202]

Before I leave this part of the evidence, it is appropriate to make further comment about the appearance of Sgt. Wylie. He is now in charge of the Cold Case Unit of the Saskatoon Police Service. It is easy to see why. He was an intelligent and articulate witness. Indeed, he struck me as the kind of officer who would be an ideal candidate for the position of Inspector or even at a higher level of the police service. I will have more to say about Wylie's timely intervention later when I contrast his actions with those of Constables Hartwig and Senger, who never volunteered any information to anyone about their assignment of November 24th and their search for Neil Stonechild.

Sgt. Jarvis' notes indicate that around this time he became aware of a complaint regarding Neil Stonechild made by Trent Ewart on November 24th, 1990, at 11:51 p.m. He learned that Cst. Hartwig and Cst. Senger were dispatched to deal with the complaint on November 24, 1990, at 11:56 p.m. I refer to his Investigation Report of November 30, 1990:

> "On checking the calls dispatched I learned that Cst. Hartwig had attended at this residence at approx 2356 hrs and cleared at 0017 hrs on November 25/90 being unable to locate the deceased."[203]

The source of this information is not disclosed in his notes or Investigation Report. The obvious question that arises is why would he check the dispatcher's calls for November 24/25, 1990 when all he really knew was that a dead body had been found? He was questioned about this:

> "Q. I'm sorry, I'm – what – I understand you went to dispatch records. My question really though is what prompted you to go to the dispatch records, what information had you received at that point in time that prompted you to search the dispatch records to see – in relation to the investigation of Neil Stonechild?
>
> A. That I became aware that a car had been sent to Snowberry Downs, sir, to remove Neil Stonechild for intoxication.
>
> Q. Now I understand that too, but how did you become aware? Can you tell –
>
> A. That I don't know sir. I don't recall –
>
> Q. All right.
>
> A. – how I got that information."[204]

Although there is no reference in his notes or Investigation Report, Sgt. Jarvis testified that he did contact Cst. Hartwig and Cst. Senger. He did not recall whether he did so personally or by inter-office memo. He was questioned about this contact:

> "A. After receiving the information that cars had been dispatched to Snowberry Downs on the evening of the 24th I did make a request to the officers who

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[202] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4468

[203] November 30, 1990 Investigation Report of Keith Jarvis contained in the Saskatoon Police Service Investigation File, Inquiry exhibit P-61, which is reproduced in this Report as Appendix "R"

[204] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4471

> attended for a report to indicate what actions they took at the residence at Snowberry Downs and to include what, if any, contact they had with Neil Stonechild.
>
> Q. Okay. Now, there's no reference in your notes to having made that request.
>
> A. No, sir.
>
> Q. Any explanation for that?
>
> A. No, sir.
>
> Q. And what – did you get a response to that request?
>
> A. I don't know, sir. It's not in my notes and I don't see it attached to this portion of the file.
>
> Q. Would you have concluded the file without getting a response from them?
>
> A. No, sir."[205]

I refer also to the following exchange:

> "THE COMMISSIONER: So, while I've interrupted you, Mr. Hesje, I'll ask another question so that I don't keep on doing so. If you don't mind, Mr. Jarvis, let me go back to the question of you having spoken to Constables Hartwig and Senger and having some discussion about them. I'm a little unclear about that because I gather what you're saying, and it seemed to me, with respect, you were being a diligent police officer. You got hold of the two people who may well have been the last persons to see this young man alive.
>
> THE WITNESS: Yes, sir, they're…
>
> THE COMMISSIONER: I'm not saying they were, but I'm saying given what you knew about dispatch, about them being sent to the location where people were complaining about Mr. Stonechild's activities and so on, would you agree that it was possible that they were the last persons to see Mr. Stonechild alive?
>
> THE WITNESS: Yes, sir.
>
> THE COMMISSIONER: That would be a significant factor.
>
> THE WITNESS: Yes, sir.
>
> THE COMMISSIONER: You've told us earlier that one of the things you want to find out is who saw the deceased alive last, if I can put it that way.
>
> THE WITNESS: That's correct, sir.
>
> THE COMMISSIONER: And you tell us that you spoke to both of them and as a – at least I gather that?
>
> THE WITNESS: I contacted or requested, I believe – it was one of two ways, My Lord. I don't recall exactly how I contacted them, either by a Jet Set, which

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[205] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4505

> was an interoffice memo, or I may have spoken to them personally. Which one, I don't recall, but I did request an Investigation Report from them as to their activities and dealings at that time.
>
> THE COMMISSIONER: And having apparently concluded that they had – they were not able to assist you, you didn't record that fact and close that avenue so that it was apparent that they were not the last people to see him alive?
>
> THE WITNESS: I didn't include it in my notebook, no, sir.
>
> THE COMMISSIONER: Wouldn't that be a fairly significant thing to enter in your notebook?
>
> THE WITNESS: It would have been covered by a separate Investigation Report left by them, My Lord."[206]

Sgt. Jarvis was suggesting that there may be additional investigation reports that were destroyed. The evidence establishes that there were no such additional investigation reports.

Sgt. Jarvis made various contradictory statements about whether he spoke to Cst. Hartwig and Cst. Senger. He was questioned about his answer to the RCMP that he thought he had approached the two officers personally.[207] In the final analysis, he seemed to be insisting that he had in fact communicated with them in some way. It is difficult to understand these responses as, given his insistence that he wrote down everything of importance in his notebook, that there is no account of any kind that he made any inquiries of Cst. Hartwig or Cst. Senger, or that any conversation or communication took place between Sgt. Jarvis and either of them.

At 6:52 p.m., Jason Roy contacted Sgt. Jarvis and advised him that he was with Neil most of the day and evening of November 24th. Sgt. Jarvis arranged to meet with Jason Roy at 8:30 p.m. at 1121 Avenue P South for the purpose of taking a statement from him.

Prior to meeting with Jason Roy, Sgt. Jarvis spoke to Claudine Neetz at 7:40 p.m. She advised him that Trent Ewart was babysitting on the evening of November 24th and had friends at the apartment, being her sister, Lucille Neetz, and Gary Horse. Sgt. Jarvis arranged to meet Trent Ewart at the police station at 10:00 p.m. for the purpose of taking a statement from him.

At 8:45 p.m., Sgt. Jarvis attended at 1121 Avenue P South to meet with Jason Roy.

Sgt. Jarvis and Roy were together for 55 minutes. The Sergeant made no notes of their conversation. He had Roy complete a longhand statement and answer a series of questions. Roy signed the statement.[208] I have reproduced the text of this handwritten statement in my review of Roy's evidence. However, it is worth repeating in this context:

> "Me & Neil were at juli Binnngs of 3269 Milton street we were sitting around having coffee & neil said lets go see Trevor and I said ok we left at about 2:00 p.m. and caught the Bus at the confed terminal, and we were talking to this one white guy about old time fights then wee kept on going to Trevor we got there at about 2:45 sat around with Trevor and just talked about custody

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[206] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4512-4514

[207] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4512-4513

[208] Handwritten Statement of Jason Roy dated November 30, 1990, reproduced in this Report as Appendix "L"

time & girls. We busing around & I saw an old friend & he lent me $20.00 didn't have nothing to do. We went and hung around circle park mall till around 6:30 & niel said lets go to my moms and get some money from his mom so went over there and niels mom wasnt home so I sold my goves to Marcelle and he went & bought us a 40 ounce oef Silent Sam. We over to juli's and drank the hole bottle straight just me & neil. We were just sitting around talking about whatever and he said lets go find Lucille. So we started on our way to Snowberry Downs I don't rember how we got to seven-11. we stopped there and tried buying something but a cant remember If they sold me anything we started walking over there and stopped on the boulevard and we were arguing but I dont what about and we got to one apartment looked for lucille's sister but it wasn't there so we checked other apartments for the name neetz. But we couldn't it any where so we got to the last apartment and we were about to check it then I must have stopped him and we stood there and argued for what I don't and he turned around and said fuckin Jay and I looked around and blacked out and woke up at juli binnings.

Q. What time approx did you last see Neil Stonechild alive on NOVEMBER 24 1990

A. Could be about 1130 pm.

Q. When you say the name Trevor is that Trevor Nowaselski

A. Yes.

Q. What condition was Neil in when you last saw him

A. Pretty Drunk. Well totally out of it

Q. Is there anything else you wish to tell me

A. No that's all I can think of.

Q. Is this a true statement

A. Yes."[209]

Sgt. Jarvis maintained that nothing was discussed during the Roy meeting other than what appears in the statement. This statement would not have occupied 55 minutes, even allowing for some preliminary conversation. Roy could have recounted what was reproduced in his one and a half page longhand statement in 5 to 10 minutes. Writing it down might have occupied another 10, or possibly, 15 minutes. A useful comparison can be made with the times recorded when Sgt. Jarvis took Trent Ewart's statement at 10:00 p.m. the same night. Ewart's statement was one page in length. The total interview with Ewart, according to Sgt. Jarvis's report, lasted 10 minutes. I do not accept that Sgt. Jarvis and Roy only discussed what was in Roy's written statement.

As we will see later, Sgt. Jarvis knew a great deal more about what happened on November 24/25, and he learned it from Roy. He conceded, by the way, that he may have talked to Roy several times.

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[209] Transcribed text of Handwritten Statement of Jason Roy, dated November 30, 1990, Inquiry exhibit P-6

At 9:45 p.m., Sgt. Jarvis spoke with Lucille Neetz. She indicated she had seen Neil Stonechild and Jason Roy on a bus at approximately 8:00 p.m. on the evening of November 24th. She also reported that Neil had been at the Snowberry Downs apartment at around midnight on November 24th.

At 10:00 p.m., Sgt. Jarvis took a written statement from Trent Ewart at the police station.[210] The interview lasted 10 minutes.

At approximately 10:45 p.m., Sgt. Jarvis filed his Investigation Report, summarizing the events of November 30th in relation to the investigation of the death of Neil Stonechild.

In his November 30, 1990 report he said this:

> "It is possible that the deceased was in fact going to turn himself in as indicated by the witnesses and was possibly heading for the correctional centre on 60th Street to do so when due to his alleged **(sic)** intoxicated state he stumbled, fell asleep and froze to death."[211]

Sgt. Jarvis did not offer any basis for this theory. In later years, he raised it again with the RCMP but could not point to any evidence to support the suggestion. He was also questioned about this theory at the hearings. I refer to the following exchange:

> "Q. Now halfway down that report you write, "At this time there is no evidence to support foul play, but the information about Pratts cannot be ruled out." And that was your view at the time?
>
> A. Yes, sir.
>
> Q. And then you state, "A clearer picture will show following the autopsy and its findings." You continue, "It is possible that deceased was, in fact, going to turn himself in, as indicated by the witness, and was possibly heading for the Correctional Centre on 60th Street to do so when due to his alleged intoxicated state he stumbled, fell asleep and froze to death."
>
> A. Yes, sir.
>
> Q. At that point in time is that what you believed happened?
>
> A. Yes, sir. I was thinking out loud, if you will, ..."
>
> ...
>
> Q. Did you think that it made any sense for the – a young offender to be turning himself in at the Correctional Centre?
>
> A. No, sir, but being in the area that he was, where he was found, he was in close proximity to the Correctional Centre. With the weather conditions at the time it was very feasible for any individual to walk up to a Correctional Centre, knowing full well that he's not going to be held there, but they would certainly contact the local police service to have him picked up and

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[210] Handwritten Statement of Trent Ewart dated November 30, 1990 contained in the Saskatoon Police Service Investigation File, which is reproduced in this Report as Appendix "R".

[211] Investigation Report of Keith Jarvis, November 30, 1990, contained in the Saskatoon Police Service Investigation File, Inquiry exhibit P-61, which is reproduced in this Report as Appendix "R".

> either transported to, say, Kilburn Hall or a community group home, whatever the case may be. But it was an avenue for him to take."[212]

As I have observed elsewhere, the idea was rejected, and rightly so, as preposterous. The Sergeant was also asked what importance he attached to the fact that the deceased was found at 57th Street. He stated he was not concerned as it was not unusual for people to be found walking around in the north industrial area in the early hours of the morning:

> "Q. And other than that, had – did you have any other explanation as to how the deceased got to the location between 57th and 58th Street?
>
> A. No, sir.
>
> Q. Was that a matter of concern to you, how he got there?
>
> A. To some extent, but it wasn't uncommon to find individuals walking around the North Industrial area in the early hours of the morning and late evenings. There was a tremendous amount of activity that went on in the North Industrial area, both warehouse employees, truckers, cars, there were individuals that were out there to commit offences."[213]

Not surprisingly, nobody confirmed this evidence. In fact, this assertion was contradicted by the testimony of Glen Winslow. In November of 1990, Winslow was an Area Sergeant assigned to the north end of Saskatoon, which included the location where Neil Stonechild's body was located. Winslow testified as follows:

> "Q. So you were fairly familiar with that area of 57th Street, 58th Street.
>
> A. That whole area, yes.
>
> Q. It's my understanding at that time there was a Hitachi building on 58th Street.
>
> A. Yes.
>
> Q. And would you be on patrol in that area from time to time?
>
> A. Because Area C was usually short changed with manpower I spent a great deal of time as probably the only policeman in that area.
>
> Q. Okay.
>
> A. A lot of the time, and yes, I patrolled that whole entire area.
>
> Q. Was it – how frequently would you encounter youth, young people in that area at night?
>
> A. Rarely."[214]

Given the character of the area, the time of day, and weather conditions it is no surprise that no activity was reported in the area by anyone. Indeed, the period of time, including several daylight periods, did not produce one witness who observed Neil Stonechild's body until November 29th.

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[212] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4489-4491

[213] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4493

[214] Evidence of Glen Winslow, Inquiry transcript, vol. 17 (October 10, 2003): 3317-3318

At the conclusion of his November 30 report, Sgt. Jarvis made this recommendation:

> "It is suggested that with the possibility of foul play, that this file be turned over to Major Crimes for immediate follow up."[215]

This was a very significant statement. It called for immediate and critical action. Sgt. Jarvis was asked what should have happened:

> "Q. Now what did you expect to happen to the file on your four days off? You've indicated – suggested that the file should be turned over to Major Crimes for immediate follow-up?
>
> A. That's what I expected to be done, sir.
>
> Q. And like – this may be a little repetitious, but what was the process, how did you expect that to happen?
>
> A. The Investigation Report, as we're looking at in P-61, was left by me, typed up. Again it would have gone through the – staff sergeant reader, he would have addressed the file, looked at it, signed it, if you will, put his badge number. It would have then gone back to my immediate supervisor, which was the staff sergeant in charge of Morality. With the request being made, he would have hopefully perused the report and passed it on to Major Crimes with the hopes that they would be able to pursue it further."[216]

It is apparent, from all the evidence heard at the Inquiry, that this urgent request was dismissed by the Reader and the Staff Sergeant on duty on the next shift.

Sgt. Jarvis was off duty for the following four days, returning to duty on December 5th, 1990. He resumed his investigation of the death of Neil Stonechild at that time, and no explanation was provided as to why the file was not transferred to Major Crimes. Sgt. Jarvis did nothing to press his superior and Major Crimes for an explanation. Sgt. Jarvis could not recall any instance where a file referred to Major Crimes remained in Morality.[217] He also confirmed that he fully expected Major Crimes would follow through.[218]

The only activity on the file, between November 30th and December 5th, is a call from a youth worker, Dianna Fraser. The call was received by Sgt. Pfeil on December 2nd, 1990. He filed an Investigation Report relating to the call. The information provided by Fraser again indicated the possibility of the Pratts being involved in the death of Neil Stonechild.

On December 5th, 1990, Sgt. Jarvis worked the day shift from 8:00 a.m. to 8:00 p.m. His investigations on that day were cursory at best. At 10:20 a.m. he spoke to Shawn Draper. Sgt. Jarvis's notes indicate that Draper last saw Neil on the 19th day of December and spoke to him on the phone on December 3rd. It appears the reference should have been to

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[215] Investigation Report of Keith Jarvis dated November 30, 1990, contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61, which is reproduced in this Report as Appendix "R"

[216] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4494

[217] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4495

[218] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4496

November rather than December. At 1:30 p.m., Sgt. Jarvis attended at 3269 Milton Street and interviewed Sharon Night. She confirmed the deceased had been at that residence on the evening of November 24th. She also confirmed he was with Jason Roy and he and Roy were drinking a bottle of Vodka. Night indicated that Stonechild and Roy left the home at approximately 8:30 p.m., heading for the 7-Eleven at 33rd Street and Confederation Drive.

At approximately 2:00 p.m., Sgt. Jarvis attended at 104 – 28 Saskatchewan Crescent East looking for Gary Pratt. He did not locate him. At 2:45 p.m., Sgt. Jarvis attended at 1106 Avenue K North looking for Eddie Rushton, but again was unable to locate him.

At 3:35 p.m., Sgt. Jarvis spoke to the pathologist, Dr. Adolph. He indicated that although his initial opinion was that the deceased had been dead for a minimum of 48 hours, it was possible the deceased was dead from November 25th, 1990. The significance of that opinion was either lost on the Sergeant or ignored by him. He should have connected the time of death to the events of November 24/25 and raised an obvious question.

Sgt. Jarvis recorded that Dr. Adolph confirmed there were no signs of trauma to the body and that foul play was not evident. Dr. Adolph testified that, although he did not recall the conversation, he did not believe he said there were no signs of trauma to the body. He likely reported there was no evidence of traumatic death.

At approximately 4:30 p.m., Sgt. Jarvis filed an Investigation Report. It is helpful to set out the final comment in his report of December 5, 1990:

> "Several Crime Stoppers tips have also been received however it is the opinion of the Investigator that these are unfounded and directed more toward causing disharmony on the street against the Pratts. It is felt that unless something concrete by way of evidence to the contrary is obtained the deceased died from exposure and froze to death. There is nothing to indicate why he was in the area other than possibilities he was going to turn himself in to the correctional centre or was attempting to follow the tracks back to Sutherland group home, or simply wandered around drunk until he passed out from the cold and alcohol and froze. Concluded at this time."[219]

Sgt. Jarvis was finished with the investigation. That conclusion is supported not only by his own words but other circumstances. Early in the hearings there were numerous suggestions that the file copied by Cst. Ernie Louttit was not the complete record of the Saskatoon Police Service investigation. These suggestions were not supported by the evidence. There was no evidence of any further investigation of the death after December 5th, 1990, until the RCMP began their investigation in 2000.

Sgt. Jarvis concluded the investigation after interviewing eight potential witnesses, and taking written statements from only two of them. Some of these interviews were done by telephone. In addition, he contacted the family for the purpose of notifying them of the death, and he has a record of contact with the Coroner, the Pathologist, and Sgt. Wylie.

There can be no doubt that the investigation was prematurely concluded. This is acknowledged by the Saskatoon Police Service, and to some extent, even by Sgt. Jarvis. I shall review the deficiencies in the investigation in part three of this report.

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[219] Investigation Report of Keith Jarvis dated December 5, 1990, contained in the Saskatoon Police Service Investigation File, Inquiry transcript P-61, which is reproduced in this Report as Appendix "R"

In January, 1991, Cst. Louttit met with Sgt. Jarvis to advise him that the Stonechild family had information indicating Gary Pratt's involvement in Neil's death. Initially, Sgt. Jarvis stated that he had no recollection of the conversation. Given the tenor of the general discussion, as related accurately, in my view, by Cst. Louttit, I cannot imagine how Sgt. Jarvis could not have responded. I refer to Cst. Louttit's description of the meeting:

> "A. We met for approximately 40 minutes point-by-point on what I – the concerns I had. I found Sergeant Jarvis to be argumentative, to be dismissive. You know, when I asked – when I'd asked about certain things, it was – and I can't remember the exact wording, but basically that the matter was in hand and that I should leave it alone. And I walked away from the meeting very frustrated and – I don't know how else to describe it, I came away frustrated and hoped for the best, I guess. He knew what the concerns were."[220]

In a tape recorded interview, Sgt. Jarvis was asked for his assessment of Cst. Louttit. The following exchange took place:

> "Q. You mentioned earlier about Ernie Louttit. Tell me what your concern was with Louttit. You mentioned a report, that the only report we had –
>
> A. I don't know what he's got to do with this though.
>
> Q. Well –
>
> A. He wasn't involved in the investigation at all.
>
> Q. Alright.
>
> A. He had absolutely nothing to do with this. He just had a bad habit of sticking his nose in other peoples files.
>
> Q. Oh, yeah.
>
> A. And not just mine. There was other people, other investigations that people were doing. He had a habit of sticking his nose in because he knew a lot of the Native community."[221]

It is interesting that he remembers his reaction to Cst. Louttit's inquiry even though he said initially he did not recall the conversation. Mindful of Sgt. Jarvis' repeated statements that the Stonechild investigation was still pending after December 5, 1990, and would be reopened if any new evidence surfaced, one can only wonder what more it would have taken to get the Investigator to take some further action.

Sgt. Jarvis was approached by Sgt. Eli Tarasoff about the same time. Again Sgt. Jarvis claimed to have no recollection of his meeting with Sgt. Tarasoff. Sgt. Tarasoff, whose son was a friend of Neil Stonechild, had promised Neil's grieving mother that he would make some inquiries. I refer to Sgt. Tarasoff's evidence:

> "Q. Did you – were you at some point contacted by Stella Bignell?

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[220] Evidence of Cst. Ernie Louttit, Inquiry transcript, vol. 15 (October 8, 2003): 2844-2845

[221] Transcript of tape recorded interview of Keith Jarvis by Robert Martell on August 11, 2003, Inquiry exhibit P-111: 76

> A. She did give me a call, it was some time after the incident, I believe, and she – she did ask me, I believe, to look into it."[222]

Sgt. Tarasoff suffered the same fate as Cst. Louttit. Once again, what more was needed for Jarvis to act? Two experienced members of his own police service had, independently, presented him with compelling reasons to do more. They were not members of the public or informants. They were his colleagues.

One of the crucial issues that emerged at the hearings was whether Sgt. Jarvis received information that Neil Stonechild had been in police custody on November 24/25, 1990. As background to this issue, it is necessary to review the events of 2000/2003 relating to Sgt. Jarvis.

Sgt. Jarvis was contacted by Cpl. Jack Warner of the RCMP Task Force on March 3rd, 2000. At the time of the interview, Sgt. Jarvis did not have his notebook or the Saskatoon Police Service file. He had no recollection of the matter, but agreed to be interviewed and to cooperate with the RCMP.

On April 4th, 2000, Sgt. Lyons of the RCMP met with Jarvis at his residence at Burnaby, British Columbia. At this interview, Jarvis had only a vague recollection of events relating to the Stonechild investigation. He was again interviewed by Sgt. Lyons and Cpl. Warner on June 21st, 2000.

On October 11th, 2000, Jarvis again met with Sgt. Lyons and Cpl. Warner. At this time he was provided with a copy of his notebook for the relevant period, which had been located by S/Sgt. Zoorkan and turned over to the RCMP on July 19, 1990. On October 12th, 2000, Sgt. Lyons and Cpl. Warner took a tape recorded statement from Jarvis. In this tape recorded interview, Jarvis suggested that he had a recollection of Jason Roy telling him that he was stopped by the police and provided a phony name. Jarvis went further to suggest that he may have been told by Roy that he saw Stonechild was in the back of the police car. However, Jarvis also suggested that he may have learned this information from the RCMP investigators, rather than Jason Roy. I refer to the transcript of the October 12, 2000 RCMP interview of Jarvis:

> "K.Jarvis: ah...the only thing I, ya'know, I...I can't recall exactly what happened but from my understanding from...from having talked with... with yourselves and, ya'know, refreshing memories an' so forth, he was checked by the police, he was unlawfully at large apparently at the time and gave a phony name...
>
> Cpl. Warner: Uhm-mmm [affirmative]
>
> K.Jarvis: ...so he wouldn't get picked up ah...and from that stand point I'm not sure if he told me that Stonechild was in the back of the police car or if I learned that from the result of our conversations an'..."[223]

The Saskatoon Police Service file was located by Cst. Louttit on March 20, 2001, and provided to the RCMP. The RCMP again met with Jarvis on May 23, 2001, and provided him with a copy of the file. The RCMP summary of the interview with Jarvis includes the following statement with respect to the file:

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[222] Evidence of Eli Tarasoff, Inquiry transcript, vol. 18 (October 14, 2003): 3475

[223] Transcript of RCMP Interview of Keith Jarvis on October 12, 2000, Inquiry exhibit P-107

> "Having reviewed it, Jarvis confirmed Roy had disclosed seeing Stonechild in the back of the police car."[224]

Jarvis was asked whether he made such statement to the RCMP. He did not dispute that he made such statement, but he claimed the statement was made in error.

The Commission hired Robert Martell, a retired RCMP officer to assist in interviewing some of the police witnesses and to consult on issues of police investigative practices as they related to the Stonechild case. Mr. Martell was the principal Investigator in three inquiries conducted in the province of Manitoba. They were:

1. *The Public Inquiry Into the Administration of Justice and Aboriginal People of Manitoba (Aboriginal Justice Inquiry) – The Deaths of Helen Betty Osborne and John Joseph Harper.*
2. *The Commission of Inquiry Into the Deaths of Rhonda Lavoie and Roy Lavoie – A study of Domestic Violence and the Justice System in Manitoba.*
3. *The Commission of Inquiry Into Allegations of Infractions of The Elections Act and The Elections Finances Act during the 1995 Manitoba General Election.*

On August 11th, 2003, Jarvis was interviewed by Robert Martell. The interview was tape recorded. Jarvis indicated in the interview that Jason Roy had told him in the course of the investigation that he last saw Neil Stonechild in the back of a police car. The following exchange took place in that interview:

> "Q. During the general conversation, did Neil ask you – or did Jason Roy tell you that he had seen Neil in the back of the police car?
>
> A. Yes. Jason and Neil, apparently, when they left Snowberry Downs, had their disagreement, went their separate ways according to Jason.
>
> Q. Right.
>
> A. Jason indicated, I believe, that he was on Confederation Drive walking when the police car pulled up and approached him and basically did a check on him.
>
> Q. All right.
>
> A. He indicated that first of all he gave a false name.
>
> Q. Right.
>
> A. Because he was quite, actually quite happy about it –
>
> Q. Right.
>
> A. – the fact that he'd deceived the police, because there was a warrant out for his arrest –
>
> Q. Right.
>
> A. – for being unlawfully at large. He also indicated that Neil was in the back seat of the patrol car at that time.

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[224] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4534

Q. Right.

A. However he informed the police that he didn't know him because he also knew that Neil was unlawfully at large from the community, or group home in Sutherland.

Q. Right.

A. So he declined any knowledge of who Neil was. And that was the last he saw of him.

Q. Okay. So we're talking about the interview that was done at what time again on the 30th?

A. This would have been starting at 2145 hours.

…

Q. So what you're telling me then is that when you – your preliminary investigation with Jason, he tells you about being checked by the police?

A. It could have come out in the preliminary. I'm not sure when it actually came out.

Q. But it was sometime during your – this meeting with him?

A. My conversation with – it could have been during that meeting with him.

Q. Yeah, okay. And he was telling you he was checked by the police, and what's he telling you about what he saw of Neil in the back of the police car?

A. I believe he was supposedly in handcuffs.

Q. Right.

A. In the back seat. They were both under the influence and they were allowed – he was allowed to go on his way. He doesn't know what happened to Neil after that.

Q. Okay. Did he say he was bleeding?

A. No. He didn't indicate that he was bleeding.

Q. He just said he saw him in the back of the police car?

A. Did he say he was in handcuffs?

A. He said he was in handcuffs.

Q. Did he tell you that he was – what did he tell you about what the police did?

A. They just checked him, asked who he was. He lied, gave them a phony address. Basically he was allowed to continue on his way.

Q. Did he mention what type of check that they did?

A. No.

Q. Okay.

> A. Not that I can remember anyway.
>
> Q. Did he mention that they checked him in the system though?
>
> A. Not that I'm aware of."[225]

When he testified at the hearings, he recanted these statements and claimed that he had "false memories". He attributed the false memories to the interviews he had with officers Lyons and Warner over a period of time three years earlier where scenarios were put to him as having possibly occurred. He was asked to elaborate:

> "Q. So what, can we be any more specific then, what is it that – first of all, start with the RCMP, what is it they did to create this false memory on your part?
>
> A. I believe it was in the course of their interview, sir. They were trying to assist me and prompting and jogging my memory, and suggestions were made, do you recall so-and-so saying this, do you recall so-and-so saying that. I don't know if I recalled it or not for sure; whether it was my own active memory, or it was the suggestion that was made enough times that after a while you start to believe that maybe that is your memory.
>
> Q. Well, let's then be clear on what we're saying about the portions I just read. Are you saying you're not sure whether that's your memory or not, or are you saying it is not your memory?
>
> A. I'm saying that is a comment made in error, sir. Had the – that information been, in fact, correct, it would have been in my report, it would have been in Mr. Roy's statement, and it would have been in my notebook."[226]

I was invited to listen to the tape recordings of the interviews by the RCMP and Martell; the suggestion being that it would in some way reveal that the investigators had acted inappropriately. The tapes revealed nothing inappropriate or unfair about the actions of the investigating officers nor, indeed, do the briefs filed by Counsel suggest otherwise, save for the oft-repeated suggestion that Roy's account of the interview with Sgt. Jarvis was sewed into Jarvis' mind by the RCMP. I was impressed by the professionalism and thoroughness of the RCMP members and Martell throughout their inquiries. It contrasted sharply with the actions of certain members of the Saskatoon Police Service.

Although certain counsel made suggestions that the RCMP had acted inappropriately in their interviews with Jarvis, he did not suggest they acted inappropriately. At one point, he was asked if the RCMP had tricked him. He responded as follows:

> "A. I'm not saying they tricked me, ma'am, they were attempting to assist me, if you will, in remembering. And as a result of their efforts to try and assist me I became confused with what was my own memory and what was being suggested as possibly having taken place. Or did I recall this having taken place?"[227]

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[225] Transcript Interview of Keith Jarvis by Robert Martell, August 11, 2003, Inquiry exhibit P-111: 55-58

[226] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4566

[227] Evidence of Keith Jarvis, Inquiry transcript, vol. 27 (Nomber 26, 2003): 5149

In Jarvis' interview with Martel, there was no indication that Jarvis was uncertain or confused as to what Jason Roy had told him about Neil Stonechild being in the back of a police car. His statement is unequivocal and unqualified. At the time he made the statements to Martell, he believed them to be true. Jarvis never suggested otherwise. In his earlier interviews with the RCMP, Jarvis had pointed out that he may have some confusion about certain events. He gives no indication of any confusion in his interview with Martell, at least on this central point. What Jarvis was offering as explanation, goes beyond confusion. He was suggesting that he had a false memory. That is, he believed that certain things took place, which he came to realize were not factual.

In dealing with this claim of false memory, I was greatly assisted by the testimony of Dr. Yuille. His evidence is reviewed in more detail later in this Report. I comment here only on several specific points as they relate to Jarvis' testimony. Dr. Yuille stated that false memories could be created through improper interview techniques. However, based on his review of the summaries and transcripts of the interviews of Jarvis by the RCMP and Martell, he expressed the opinion that the interviews were not conducted in a manner which would create a risk of false memory. In particular, he noted that he did not see repeated suggestions of a kind that would create the risk of false memory.[228]

Dr. Yuille also noted that the background training and experience of the interviewee is a factor in assessing the risk of creating false memories. Keith Jarvis had extensive experience as a police officer. He served 27 years with the Saskatoon Police Service. His service included assignments as a Plainclothes Investigator. He acknowledged that he had conducted hundreds, if not thousands, of interviews.[229] He had also received training in interview and interrogation techniques. This training included a course presented by Dr. Avinoam Sapir. Jarvis acknowledged that Dr. Sapir had a world renowned reputation for training police on how to conduct and obtain proper detailed and effective statements. The course included training in statement analysis.

Jarvis's training made him particularly aware of the risk of contaminating a witness's recollection through repeated suggestion. When he was interviewed by the RCMP, and certainly when he was interviewed by Martell, he was aware that the RCMP was investigating possible police involvement in the death of Neil Stonechild. He had to appreciate that information that Neil Stonechild was in police custody on November 24th, 1990, would be extremely significant to the investigation. In these circumstances, I cannot accept that he was susceptible to the creation of false memory.

Dr. Yuille also explained that a person with a false memory cannot distinguish a false memory from a true memory. He was asked how a person with a false memory may come to the realization that the memory is false. He said this can occur when the person is presented with incontrovertible clear evidence that refutes the memory.

Jarvis was asked when he awoke to the realization that what he had told Martell was a false memory. The only explanation he offered was that the information was not recorded in his notebook or his report. He was cross-examined extensively on this explanation, and it was demonstrated that he had numerous independent recollections and recalled numerous details of the investigation that were not recorded in his notebook or the reports. The following are but a few examples:

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[228] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7465

[229] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4565

a. Jarvis testified that he contacted Constables Hartwig and Senger, but there is no record of the contact;

b. Jarvis testified that he made several visits to Gary Pratt's house, but only one is recorded in his notes;

c. Jarvis testified that he made several visits to Eddie Rushton's house, only one is recorded in his notes;

d. Jarvis testified that family members came to him with concerns on several occasions, but none are recorded in his notes.

It was also established that he had independent recollection of events, which were confirmed in his notes, before he had access to his notes or his report. These include:

a. Jarvis's recollection that he never personally attended the death scene or the autopsy;

b. his recollection that the Canine Unit attended the scene to search for the shoe;

c. his recollection that a complaint had come in from Snowberry Downs about Neil Stonechild.

These matters were all raised in Ms. Knox's cross-examination of Jarvis. I set out only a small portion of that exchange:

> "Q. Okay. Now would you agree with me that on June 21st, 2000 without the benefit of your notes or report, you also told the RCMP that you were aware that a complaint had come in from Snowberry Downs apartments about Neil Stonechild on that night that he was last known to be alive?
>
> A. Yes.
>
> Q. And would you agree with me that that, too, was likely a product of your own memory, given the ability and the peace and quiet of being able to think about this event over a number of months?
>
> A. Yes.
>
> Q. Okay. So you, to this point in time, agree that there are various pieces of information that you were giving the police, the RCMP, by June 21st, 2000 that you had not remembered when you were first contacted on March 3rd, 2000, because you said you didn't remember it at all. But through the natural process of thinking and considering you were able to put some of these pieces into place?
>
> A. Yes, ma'am."[230]

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[230] Evidence of Keith Jarvis, Inquiry transcript, vol. 27 (November 26, 2003): 5145-5146

I am not persuaded that what Jarvis told Martell was a product of false memory. Rather, I conclude that Jason Roy did in fact tell Sgt. Jarvis on November 30th, 1990, that he last saw Neil Stonechild in the back of the police car. Jarvis's recanting of this revelation, and his explanation for doing so, is not credible.

Even if Jarvis had not made such statements to Martell, I would not have accepted Jarvis's testimony that Roy's written statement on November 30th reflected everything that was disclosed to him at that time. It is inconceivable that a trained police officer, particularly one with special training in interviewing and statement analysis, would accept Roy's statement without further questioning. The written statement provides a rather detailed account of events of November 24th, 1990, before ending abruptly with the statement "he blacked out and woke up at Julie Binnings".[231] There should have been obvious concerns as to whether Roy was telling the whole story or whether he simply said he blacked out to conceal further details.

Jarvis did testify that he found Roy's claim to have "blacked out" to be incredible. He stated:

> "I questioned whether he actually did blackout at Snowberry Downs. If he did, how did he get to Julie Binnings later?"[232]

Jason Roy telling Sgt. Jarvis that he last saw Neil Stonechild in police custody is also consistent with Sgt. Jarvis checking the dispatch records. No other explanation was offered.

This explanation was pursued in a very thorough cross-examination of Jarvis by Ms. Knox:

> "Q. Okay. Would you not agree with me though that there was another significant piece of information that you gave to the officers that date that Jason Roy has said to the effect that you didn't go back and say maybe I'm mistaken, and I'm referring you to the information you gave very early in your – in the interview which is found at page two of the transcript, that in fact you remembered Jason Roy telling you that he'd been checked by the police that night?
>
> A. I recall that, yes, ma'am.
>
> Q. Okay. So you did tell them that early in the interview. Similarly, when they went back in April after the March, you had pieces of memory that you agree with me today are your memory. When you started back with them in October 2002 you offered them another piece of memory and you said you had a specific memory of being told on November 30th by Jason that he was checked by the police on November 24th.
>
> A. I may have, ma'am, yes.
>
> Q. Okay.
>
> A. I don't recall that right now, but.
>
> Q. Okay. Would you like me to refer you to that portion of your statement?

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[231] Handwritten Statement of Jason Roy, dated November 30, 1990, Inquiry exhibit P-6. The handwritten statement is contained in the Saskatoon Police Service Investigation File which is reproduced in this Report as Appendix "R".

[232] Evidence of Keith Jarvis, Inquiry transcript, vol. 26 (November 25, 2003): 5066

A. No, I'm sure if it's – it's all in there, ma'am.

Q. Would it be helpful to you if I suggested to you that what you said, "It was also brought to my attention as a result of the interview with Jason Roy, I believe, that he'd been checked by the police. However, he and Stonechild had gone separate ways," and that it was as a result of that information that you got from Jason Roy that you went to the Dispatch Office to check whether there'd been contact on November 24th?

A. It may very well be, ma'am.

Q. Okay.

A. I don't know where the information came from that caused me to go to the Communications Section.

Q. You do agree that you told me this morning that you didn't remember how you found it out?

A. That's correct.

Q. But you must have gotten something somewhere that prompted you to go to the Communications Office?

A. Yes.

Q. And, in fact, what you told the police is that Jason Roy was the one who gave you the information that prompted you to go to the – the Communications Office?

A. That's what it would appear, yes, ma'am.

Q. Okay. Now, can you say today that it is not true that that was the basis upon which you went to the Communications Office, that Jason Roy told you – or didn't tell you back on November 30th, 1990 that he'd been stopped and checked by the police?

A. No, I can't, ma'am.

Q. Okay. Would you go so far as to agree with me that in the circumstances it's possible that, in fact, just as Jason Roy says and just as you said to the police in October 2000, that is, in fact, what happened?

A. It's possible, ma'am."[233]

As I have already noted, the interview with Roy lasted some 55 minutes. I believe Sgt. Jarvis did press Roy for further information after he had provided the written statement, as any competent Investigator would have done. I am satisfied that in so doing, Roy did reveal to Sgt. Jarvis that he last saw Neil Stonechild in the back of a police car as Roy testified, and as Sgt. Jarvis recounted in his interview with Martell.

Sgt. Jarvis did not record this important information in his notes or reports. This cast a totally different light on Sgt. Jarvis's actions as Investigator. What might have seemed inexcusable incompetence or neglect now took on a more serious focus.

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[233] Evidence of Keith Jarvis, Inquiry transcript, vol. 27 (November 26, 2003): 5201-5203

James Allan Brooks[234]

Mr. Brooks is a retired member of the Saskatoon Police Service. He joined the Service in 1969 and retired in 1997 at the rank of Sergeant. From August 1990 until his retirement, he was assigned to the Morality section.

Brooks testified that in 1990, the Morality Unit was responsible for sudden deaths. A Morality Officer would be sent to attend scenes of sudden deaths, if a Morality Officer was available at the time. In determining whether a Morality Officer was available, Communications would generally call the Morality office. If there was nobody there, they would generally page the Morality Officer on duty or broadcast a message by radio for any available Morality Officer. If there was no Morality Officer available on duty, the Platoon Staff Sergeant could call out an off duty Officer. If Morality officers were not available to attend the scene of a sudden death, the Patrol Sergeant would direct the investigation.

The Investigation Report filed by Sgt. Jarvis on November 30, 1990, states that the file is presently assigned to Sgt. Brooks (as he then was). However, Brooks testified that the file was never assigned to him and he never had any involvement in the investigation of the death of Neil Stonechild.

Brooks testified that once a file is assigned to an Officer, it remained with that Officer. He could not recall any situation where a file was turned over to another Officer because the assigned Officer was off work for several days.-He did indicate that there were times when an assigned Officer would change their days to continue on with a file.

If a Morality Officer attended a sudden death and it appeared to be a homicide, Major Crimes would be asked to attend. However, Brooks recalled that there were only two Major Crimes officers in 1990, and they were very busy.

Brooks testified that, in his experience, if a report was dictated recommending the file go to Major Crimes, it would in fact, go to Major Crimes. He did go on to state that it might come straight back to Morality for further investigation.

Sergeant Douglas Neil Wylie[235]

Sgt. Neil Wylie is a serving member of the Saskatoon Police Service. He has been a member of the Saskatoon Police Service for approximately 25 years. He is currently assigned to the Major Crimes Unit and is the Investigator responsible for cold case files. The Neil Stonechild death was not subject to investigation by the Cold Case Files Section.

Sgt. Wylie is mentioned in the notebook of Sgt. Jarvis on November 30, 1990. The note refers to Sgt. Wylie advising Sgt. Jarvis that Stonechild had provided information regarding charges against Errol and Gary Pratt. Sgt. Wylie had no recollection providing that information to Sgt. Jarvis. Sgt. Wylie was not involved in the investigation at the Stonechild death.

Sgt. Wylie, as a result of a careful search of the records of the Saskatoon Police Service, located a copy of the Occurrence Report he had filed with respect to the incident involving the Pratts and Stonechild. Although Sgt. Wylie only vaguely recalled the incident, based on his review of the Occurrence Report he described what took place on the 1100 Block of

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[234] Evidence of Albert Brooks, Inquiry transcript, vol. 16 (October 9, 2003): 3074-3134

[235] Evidence of Sgt. Neil Wylie, Inquiry transcript, vol. 18 (October 14, 2003): 3409-3472

Avenue K North on August 11, 1990. The incident involved a dispute over some firearms that were apparently stolen by Neil Stonechild and another young offender in a break and enter of a private residence. The dispute resulted in the serious assault of Eddie Rushton. Neil Stonechild was present at the time of the assault. An account of these events is also contained in the testimony of Gary Pratt.[236]

The Saskatoon Police Service records indicate a number of officers were dispatched to the scene on August 11th, 1990. The officers attending at the scene included both Cst. Hartwig and Cst. Senger. Sgt. Wylie had a note in his notebook indicating that Cst. Hartwig spoke to Neil Stonechild at the scene.

Police records indicate that Gary Pratt and his brother Errol were arrested and charged with the assault. Neil Stonechild was subpoenaed to testify against the Pratts. As I have noted, Neil Stonechild attended court for the purpose of testifying against the Pratts. However, the charges were apparently stayed as other witnesses failed to attend.

Although Sgt. Wylie does not have an independent recollection of speaking to Sgt. Jarvis, he expressed the opinion that he would likely have brought this incident to the attention of Sgt. Jarvis after he heard of the death of Neil Stonechild. He believed that the incident provided a potential motive for someone to do harm to Neil Stonechild.

At the time Sgt. Wylie passed the information on to Jarvis, he was working Patrol. He testified, that based on his subsequent experience as an Investigator, Patrol officers are very diligent in passing on information to investigators.

Constable Geoffrey Brand[237]

Constable Geoffrey Brand is a serving member of the Saskatoon Police Service. He joined the Police Service in 1981. He was interviewed by the RCMP in 2000. At that time, he did not have his notebook covering the period of November 1990. He subsequently located his notebook and produced it to the RCMP through Sgt. Murray Zoorkan of the Saskatoon Police Service. In an entry for November 30th, 1990, he had recorded information he had received from an informant relating to the death of Neil Stonechild. This information was copied by the RCMP and the notebook was returned to Cst. Brand. When he was interviewed by Commission Counsel in 2003, Cst. Brand had again misplaced his notebook. When he testified, he had again located it.[238]

On November 30th, 1990, Cst. Brand worked the day shift from 7:00 a.m. to 7:00 p.m. He testified that at some point during the shift he was advised that someone in detention wished to speak to him. He testified that he attended at the Detention Centre at the conclusion of his shift at approximately 7:00 p.m. He recalls speaking to an informant in detention, but could not recall the identity of the person. The information provided by the informant, as recorded in Cst. Brand's notebook, related to a previous incident between Neil Stonechild and Errol, Gary, and Danny Pratt. The informant advised that Neil Stonechild had been beaten by the Pratts after Stonechild and Eddie Rushton had attempted to sell the Pratt's stolen guns. The informant also advised Cst. Brand that Stonechild had concerns approximately a week before his death about his safety and had received threats.

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[236] Evidence of Gary Pratt, Inquiry transcript, vol. 32/33 (Janaury 7/8, 2004): 6235-6253 & 6266-6362

[237] Evidence of Geoffrey Brand, Inquiry transcript, vol. 14/15 (October 7/8, 2003): 2698-2822

[238] Notebook of Cst. Brand, Inquiry exhibit P-62

Cst. Brand testified that he would have dictated a report to be left with the Investigator. However, no such report has been located, and Cst. Brand testified that he had never seen a copy of such report. He had no recollection of speaking to an Investigator about the information or of being contacted in follow-up to the information.

A summary of Cst. Brand's anticipated evidence prepared following an interview with Commission Counsel stated, "Cst. Brand passed this information on through an internal memo which he believes was given to SPS Sgt. Neil Wylie."

This statement that Cst. Brand made to Commission Counsel is puzzling. Sgt. Wylie denies that he received any information from Cst. Brand. Sgt. Jarvis records receiving information from Neil Wylie on November 30th, 1990, in his notebook. The notation appears between time entries of 4:42 p.m. and 6:52 p.m. This was before Cst. Brand met with his informant at 7:00 p.m. Cst. Brand was evasive when confronted with this statement made to Commission Counsel. He did not deny this statement, but indicated that it was possible he gave the information to Sgt. Wylie, but it could have been given to anybody.

On cross-examination, Cst. Brand acknowledged that informants are a valuable resource for police officers and that an officer's relationship with an informant was built on trust. However, he maintained that he could not recall the name of the informant. It seems somewhat unusual that Cst. Brand would not remember the name of the informant. The fact that the informant singled out Cst. Brand to provide the information would suggest that Cst. Brand had at least a good working relationship with the informant.

Cst. Brand was also questioned as to how the informant would have knowledge of the death of Neil Stonechild. He acknowledged that a person in Detention would not have access to radio or television and the body had not been identified until late on November 29th. The only explanation offered by Cst. Brand was that the informant may have been taken into custody later in the day on November 30th.

In light of the anomalies in Cst. Brand's testimony about the information he received, I question the reliability of his evidence.

Raymond Pfeil[239]

Raymond Pfeil joined the Saskatoon Police Service in June, 1967, and retired in October 2000. In 1990, Pfeil was a Sergeant assigned to the post of Reader with the Saskatoon Police Service from time to time. He testified that the responsibilities of a Reader were to read all files, investigation reports, occurrence reports, or incident reports, and to decide which section they should be directed to for further investigation or conclusion. Typically, the reports were dictated by an officer, typed up by central records staff, and then sent to the Reader's desk. He testified that in 1990, the investigation of sudden deaths, "if there is nothing really outstanding or suspicious"[240], would be assigned to the Morality Unit. He reviewed the occurrence report filed by Cst. Lagimodiere and testified that he may have sent the file to Morality. The Reader had discretion in a case like this to send to either Morality or Major Crimes, and he might have gone either way. Later, under cross-examination, Pfeil indicated he would probably lean toward sending the report to the Morality Unit. However, Pfeil was the Reader for the Investigation Report submitted by Cst. Middleton[241] on November 30, 1990, and he noted on the Report "MC/Jarvis", which meant that Report should be forwarded to Major Crimes, Jarvis.

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[239] Evidence of Raymond Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2534-2653

[240] Evidence of Raymond Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2542

Mr. Pfeil dictated an investigation report[242] on December 2, 1990. He had no recollection of the information contained in the report. The report relates to a call he received from Diana Fraser. She either phoned the Staff Sergeant Office, when Pfeil was working as the acting Staff Sergeant, or he may have answered the Crime Stoppers phone. Sgt. Pfeil also signed the report as Reader indicating he was on the Reader's desk on December 2nd, 1990. He indicated that the report would have been sent to Major Crimes. He is not sure why it was sent to Major Crimes. He speculated that this may have resulted from information he had received about the file prior to the call from Diana Fraser. He testified that he may also have looked up the file and found it had been assigned to Major Crimes.

The report prepared by Sgt. Pfeil indicates Diana Fraser advised him that Neil Stonechild had attended a party the night before his death. Gary Pratt was at the same party. She also advised that Pratt and Kelly McDonald assaulted Stonechild about a month ago. The report stated that Crime Stoppers information indicates that Danny and Gary Pratt are responsible for assaulting Stonechild at the location he was found on 57th Street, had some of his clothing taken and left to die. There was also reference of Diana Fraser indicating that she sees the Stonechild group gathering and suspects there will be trouble between the two groups.

Glen Clayton Winslow[243]

Glen Winslow joined the Saskatoon Police Service in December of 1968 and retired in June of 2003. In November of 1990, Winslow was assigned as Patrol Sergeant to area "C", the north end of Saskatoon. This area took in the location where the body was discovered and extended close to Snowberry Downs.

Saskatoon Police Service records indicate that he was dispatched to a residence on 37th Street West at approximately 5:25 a.m. on November 25, 1990. Cst. Hartwig and Cst. Senger were also dispatched to the same address to notify next of kin of a murder/suicide involving a father and two sons. Winslow did not recall the incident nor any contact with Constables Hartwig and Senger on that night. He had no recollection of any dispatch or incident involving Neil Stonechild during his shift from 7:00 p.m. November 24th to 7:00 a.m. November 25th.

Winslow is familiar with the area around 57th Street where the body of Neil Stonechild was found. He testified that he spent a great deal of time as probably the only policeman in that area. He rarely encountered young people in the area at night.

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[241] Investigation Report of Cst. Middleton, contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[242] Investigation Report of Raymond Pfeil, contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[243] Evidence of Glen Winslow, Inquiry transcript, vol. 18 (October 14, 2003): 3324-3354

James Edward Drader[244]

Ed Drader retired from the Saskatoon Police Service in 1991 having obtained the rank of Staff Sergeant. He joined the force in 1965. In November of 1990, he held the rank of Operational Staff Sergeant and was assigned as a Reader for D Platoon.

While Drader does not recall the Stonechild file, he acknowledged that he was the Reader who reviewed Sgt. Jarvis's concluding Investigation Report of December 5, 1990.[245] The report was left by Sgt. Jarvis at 4:30 p.m. and reviewed by S/Sgt. Drader at 5:16 p.m., some 26 minutes later.

The December 5th report states: "Concluded at this time." S/Sgt. Drader understood this to mean that the Officer had finished the investigation at that time and that there likely would not be anymore follow-up unless new evidence was developed. Notwithstanding that, S/Sgt. Drader signed the report with his badge number beside the words "Approved", he testified that did not indicate that he agreed that the file should be concluded at that time. Drader testified that it was not his function to examine the report for thoroughness or to determine whether there were things missed out or things that required follow-up. That was the responsibility of the Officer in charge of the section for which the Investigator worked.

Drader's view of the Reader's role in reviewing investigation reports is supported by the testimony of Bruce Bolton, a former Reader and, later, Staff Sergeant in charge of the Major Crimes Unit at the Saskatoon Police Service.[246] Bolton testified that a reader's main function was to review occurrence reports, accident reports, and arrest reports and to assign them. Investigation reports in relation to files that have already been assigned to an investigative unit were not necessarily reviewed by the Reader to determine if the investigation was properly handled. Bolton stated that it was the responsibility of the Staff Sergeant in charge of the investigative unit to make that determination. The Reader did not have the time to do an in-depth analysis of every Investigation Report. They were simply redirected by the Reader to the appropriate investigation unit.

Drader's and Bolton's understanding of the responsibility of the Reader in reviewing investigation reports, however, is not entirely in accordance with the evidence of another former Saskatoon Police Service Reader, Raymond Pfeil. Pfeil's evidence is consistent with that of Drader and Bolton in the sense that Pfeil states that if he received a report from an Investigator indicating "concluded at this time" he would send it back to the Staff Sergeant in charge of the relevant investigative unit. It was up to the Officer in charge of that unit to conclude the file. However, Pfeil went on to state that if he did not feel the file should be concluded, as recommended, he would either make a note on it or get a hold of the Staff Sergeant in charge of the investigative unit.[247]

I accept the evidence of Pfeil that the Reader had some duty to flag reports where the recommendation to close the file was obviously premature. The evidence, however, is clear that the ultimate responsibility for supervising investigation files and approving the closure of such files lay with the Staff Sergeant in charge of the relevant investigative unit.

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[244] Evidence of James Drader, Inquiry transcript, vol. 16 (October 9, 2003): 3044-3074

[245] Investigation Report of Keith Jarvis, dated December 5, 1990, contained in Saskatoon Police Service Investigation File, Inquiry exhibit, P-61

[246] Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3224-3226

[247] Evidence of Raymond Pfeil, Inquiry transcript, vol. 14 (October 7, 2003): 2553

Theodore Hugh (Bud) Johnson[248]

Bud Johnson joined the Saskatoon Police Service in 1963 and retired in February 1992 with the rank of Staff Sergeant. He served approximately 15 years as a Plainclothes Investigator. Most of that time was spent in the Youth Unit. In 1990, he also served as Staff Sergeant in charge of the Morality Unit.

Although Johnson was uncertain as to dates, it is clear that he was Staff Sergeant in charge of the Morality Unit in November of 1990. Sgt. Jarvis's notebook lists Johnson as his Staff Sergeant on November 29 & 30, 1990.[249]

S/Sgt. Johnson testified that an Investigator would be sent to the scene of a sudden death if the uniform officer in attendance requested an Investigator. He could not recall a situation where an Investigator was requested but none was sent out. He did allow that it was possible if no Investigator was available.

The SIM System Incident Report[250] for the Stonechild file indicates the Stonechild file was assigned to Sgt. Jarvis by S/Sgt. Johnson. The same report indicates that the Jarvis report of December 5th, 1990, was approved by S/Sgt. Johnson. S/Sgt. Johnson had no specific recollection of the file or having approved Sgt. Jarvis' report. Under cross-examination, he acknowledged that he was the one that would have approved the conclusion or closure of the file.

Johnson acknowledged that a Staff Sergeant in charge of Morality would review the investigative reports filed by investigators working in that Unit. Johnson was referred to the November 30th Investigative Report filed by Sgt. Jarvis in which he suggests the matter should be assigned to Major Crimes.[251] He indicated that in a situation like that he probably would have discussed it with the Investigator and Major Crimes. Johnson testified that he would not expect that an Investigation Report would be filed with respect to a meeting with the Investigator and the Officer in charge of Major Crimes about reassigning a file to Major Crimes.

Johnson was also referred to Sgt. Jarvis' concluding Investigation Report of December 5, 1990.[252] If the report stated "Concluded at this time", he understood that to mean the file was closed. As the Staff Sergeant, he would review the file to see if he agreed that it should be concluded. He could not recall any situation where he referred the file back to the Investigator for further follow-up.

Constable Ernie Louttit[253]

Constable Louttit is a Patrol Constable with the Saskatoon Police Service. He has held that designation since joining the service in 1987.

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[248] Evidence of Theodore Johnson, Inquiry transcript, vol. 18 (October 14, 2003): 3354-3409

[249] Notebook of Keith Jarvis, Inquiry exhibit P-106: 41-43

[250] SIMs Incident Report, Inquiry exhibit P-59

[251] Investigation Report of Keith Jarvis, dated November 30, 1990 contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[252] Investigation Report of Keith Jarvis, dated December 5, 1990 contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[253] Evidence of Ernie Louttit, Inquiry transcript, vol. 15-16 (October 15-16, 2003): 2822-3043

Constable Louttit knew Neil Stonechild's younger brother, Jason, who he referred to as "Jake". He also knew Neil Stonechild to see him. He recalled learning that the frozen body found in the north end of the City was identified as Neil Stonechild. He also recalled hearing stories or speculation that Stonechild had died on his way to the Correctional Centre.

On December 4, 1990, while working patrol, Cst. Louttit encountered Jason Stonechild at an arcade on Avenue G and 20th Street. Jason wanted to speak to him about the death of his brother. Jason indicated that he had information that Neil was at a party in the north end, somewhere up by the 7-Eleven, and that he had been beaten up and dropped off by Gary and Danny Pratt.

Cst. Louttit made a note of this meeting in his notebook. The meeting took place at 4:50 p.m.

After receiving this information, Cst. Louttit went back to the police station, pulled the police file from Central Records, and photocopied it. Within the next day or two, he passed on the information he had received from Jason Stonechild to the Major Crimes Unit. He does not recall to whom the information was provided. He did not file a report.

Cst. Louttit believes that he had the report with him in a clipboard that he carried on patrol until March 1991. After that he took it home and put it in a locked box he had acquired during his service in the army. Cst. Louttit was interviewed several times by members of the RCMP task force in 2000. At the initial interviews, he did not recall that he had preserved a copy of the file. However, in March 2001, Cst. Louttit was looking through the barrack box for material from his army days. He located the Stonechild file and immediately called Corporal Jack Warner of the RCMP task force. The next morning, he delivered the file to acting Superintendent Murray Zoorkan. The file was then turned over to the RCMP. The file preserved by Cst. Louttit[254] is the only known copy of the Saskatoon Police Service file, as the original had been destroyed.

Cst. Louttit testified that he had a number of concerns after reviewing the file. Shortly after that, at the request of Jason Stonechild, he spoke to Stella Bignell at her home. He did not make a note of this meeting or any other meeting with Mrs. Bignell. He was concerned that the Major Crimes Unit would consider him to be meddling in the investigation and he could even be subject to discipline.

He recalls that Stella Bignell was very upset and wanted answers to what happened to her son. Cst. Louttit felt she was being treated poorly in regards to the investigation, and the matter was not being thoroughly investigated. He told Stella that if Neil had been a person of different social stature, the investigation would have been much more thorough and the Officer involved in the investigation would have been more forthcoming with her.

The extent of Cst. Louttit's feelings about the handling of the Stonechild investigation was evident. He stated that if such an incident had occurred again he would have either moved to another police force or quit policing entirely.

He indicated to Mrs. Bignell that he would look into the matter further. He wrote down a list of his concerns and arranged a meeting with his Staff Sergeant. These concerns are listed in his notebook on December 30, 1990. His first concern related to the theory that Stonechild was walking to the Correctional Centre. As a young offender, he would have no reason to go to the Correctional Centre. He was also concerned about the effort or lack of effort made to locate Neil's ball hat, which he was in the habit of wearing, and the missing shoe. He also wanted to know what efforts had been made to establish the activities of Neil on the night he disappeared, and what, if any, follow-up there had been on the information he provided about a party in the north end.

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[254] Saskatoon Police Service Investigation File, Inquiry exhibit P-61

Cst. Louttit's Staff Sergeant arranged a meeting with S/Sgt. Bruce Bolton of Major Crimes. The meeting took place on January 7, 1991. The meeting with S/Sgt. Bolton lasted several minutes. S/Sgt. Bolton advised him to speak to Sgt. Jarvis. Cst. Louttit then met with Sgt. Jarvis for approximately 40 minutes and reviewed his concerns point by point. Cst. Louttit described Sgt. Jarvis as argumentative and dismissive. Sgt. Jarvis indicated the matter "was in hand" and that Cst. Louttit should leave it alone. In fact, Sgt. Jarvis had already closed the file.

He made no further investigations and restricted his contact with Mrs. Bignell as he felt he might compromise himself with the SPS.

Cst. Louttit recalled the March 4, 1991 article in the StarPhoenix.[255] In that article, statements are attributed to Mrs. Bignell that a senior police officer had indicated to her that the investigation would be ongoing if Neil was the son of the mayor. Although Cst. Louttit was not identified in the article, he recognized that Mrs. Bignell had gone to the press with statements he had made. He called Mrs. Bignell shortly after the article came out to tell her she was going to have to deal with the investigators.

In 1992 or 1993, Cst. Louttit reviewed the Stonechild Central Record's file to see what had transpired since his meeting with Sgt. Jarvis. There was nothing on the file relating to the information he had received from Jason Stonechild and passed on to Major Crimes. There was nothing on the file with respect to the concerns he had raised with Sgt. Jarvis.

Cst. Louttit testified that he never received any information or rumors that members of the Saskatoon Police Service were involved in the death of Neil Stonechild. He testified that if he had received any such information, he would have pursued the matter with other members of the Police Service.

After the StarPhoenix article was published in March 1991, Cst. Louttit expected that the death would get investigated. He expected to be called in and either dressed down or pressed for information. Nothing happened.

Bruce Bolton[256]

Bruce Bolton joined the Saskatoon Police Service in 1963 and retired in 1994 having obtained the rank of Staff Sergeant. On January 7th, 1991, he was assigned as Staff Sergeant in charge of the Major Crime Section. In the latter part of 1990, he was an Operational Staff Sergeant assigned as a Reader. Bolton initialed the November 29th, 1990 Occurrence Report of Cst. Lagimodiere and the November 29th, 1990 and November 30th, 1990 investigation reports of Sgt. Jarvis. He initialed these reports as Reader.[257]

As indicated above, Bolton did not view it as the Reader's role to evaluate investigation reports to determine if the investigation was properly conducted. This was the job of the

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[255] StarPhoenix Article dated March 4, 1991, Inquiry exhibit P-1

[256] Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3216-3308

[257] These Reports are contained in Saskatoon Police Service Investigation File, Inquiry exhibit P-61

Staff Sergeant supervising the investigation unit. Indeed, as Staff Sergeant in charge of Major Crime, S/Sgt. Bolton would review and evaluate investigative reports to determine if the investigation had been properly conducted. Bolton testified that when an Investigator recommended closing a file, it was the responsibility of the Staff Sergeant in charge of the investigative unit to take into account the complete file and determine whether it should be concluded. If he had any question about it, he might take it to a prosecutor to get an opinion as to whether there should be other investigations.

Counsel referred Bolton to the November 30th, 1990 Investigation Report of Keith Jarvis which was initialed by S/Sgt. Bolton as Reader. In this report, Sgt. Jarvis states, "It is suggested there was the possibility of foul play, that this file be turned over to Major Crimes for immediate follow-up."[258]

While Bolton does not recall the specific situation, based on his experience, he testified that he would probably have still directed the file to the Morality Unit. It was the responsibility of the Staff Sergeant supervising that Unit to reassign the file. He testified that it was possible that the Staff Sergeant in charge of Morality would decide not to reassign the file. He also testified that, based on his experience as Staff Sergeant in charge of the Major Crimes Unit, he could not recall any situation where a request was made for the Major Crimes Unit to take over an investigation and Major Crimes declined to do so.

After reviewing the Occurrence Report filed by Rene Lagimodiere, Bolton testified that it would be consistent with his practice in 1990 to assign the file to the Morality Unit. He indicated that it could be reassigned to Major Crime if suspicious circumstances were identified. In that situation, he testified, there would likely be discussions between the Staff Sergeant in charge of Morality and the Staff Sergeant in charge of Major Crimes or the Inspector in charge of the Plainclothes Section. If, however, such discussions took place, Bolton would expect an Investigation Report would be filed to reflect the discussions and the decision that was made. There is no evidence that such an Investigation Report ever existed.

Mr. Bolton did not have any recollection of the Stonechild investigation or discussing the investigation with Cst. Ernie Louttit in January 1991. He did acknowledge it was possible that a meeting took place with Cst. Louttit as described by Cst. Louttit.

Bruce Bolton also acknowledged that he was disciplined by the Saskatoon Police Service for an incident in 1969 where he and his partner picked up an individual and dropped him off outside of town. That person filed a complaint and Bolton was disciplined.

Eli Tarasoff[259]

Eli Tarasoff joined the Saskatoon Police Service in 1965 and retired in May of 1999. At the time of his retirement he was a Sergeant. He spent a considerable amount of time in the service as a Plainclothes Investigator. He was not certain as to his assignment in November and December 1990, but believes he may have been a Patrol Sergeant on the east side at that time.

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[258] Investigation Report of Keith Jarvis dated November 30, 1990 contained in the Saskatoon Police Service Investigation File, Inquiry exhibit P-61, which is reproduced in this Report as Appendix "R"

[259] Evidence of Eli Tarasoff, Inquiry transcript, vol. 18 (October 14, 2003): 3472-3544

Tarasoff knew the Stonechild family prior to the death of Neil Stonechild. He has an adopted son of First Nations ancestry who was a friend of Neil and Marcel Stonechild. He believes that he had also met Neil's mother, Stella Bignell.

Tarasoff learned of the death of Neil Stonechild through an obituary published in the Saskatoon StarPhoenix. He recalls reviewing the Saskatoon Police Service file in Central Records. He recalls that he spoke with Mrs. Bignell "quite some time" after the death. Tarasoff also received a call from Mrs. Bignell. She asked him to look into the investigation of Neil's death. Tarasoff was uncertain as to whether he looked at the file shortly after he read the obituary or after he was contacted by Mrs. Bignell. Tarasoff does not believe the Autopsy Report or the Toxicology Report were on the file when he reviewed it.

Tarasoff spoke to Sgt. Jarvis about the Stonechild investigation. He believes that was likely after he spoke with Mrs. Bignell. He could not say whether he was aware of the file having been concluded after reading the file, but he did testify that after speaking with Jarvis he was aware the file was concluded.

In a statement Tarasoff provided RCMP, he described Keith Jarvis as "an Englishman with a colonial attitude". He further stated: "When natives were involved he did not take it serious." In his testimony, he confirmed that he believed that to be the case. He also testified that when he spoke to Sgt. Jarvis, he suggested to him that the investigation could have been done in more depth, and Sgt. Jarvis was rather flippant about it. He asked Sgt. Jarvis what he thought about the file and Sgt. Jarvis had responded: "The kid went out, got drunk, went for a walk and froze to death."

Tarasoff did not believe the death had been thoroughly investigated. However, he did not take his concerns with respect to the investigation to anyone else within the Saskatoon Police Service. Mr. Tarrasoff testified that he could not offer any good reason for not pursuing the matter, only an excuse. The excuse provided by Tarrasoff was that his personal life was in a shambles at that particular time. He did testify that he advised Mrs. Bignell that she should speak to a lawyer, and through a lawyer she might have some success in having the file reopened.

Tarasoff indicated that he did not hear anything from anyone associated with Neil Stonechild that police officers may have somehow been involved with Neil the night he disappeared.

David Scott[260]

Dave Scott joined the Saskatoon Police Service in 1969. From 1988 to October of 1991, he was the Crime Stoppers Media Co-ordinator of the Saskatoon Police Service. In March of 1989, he also assumed responsibility as the first Media Officer for the Saskatoon Police Service. In June of 1996, he became the Chief of the Saskatoon Police Service and served in that position until he left the force in June of 2001.

The responsibility of the Media Officer was to meet daily with the media to review occurrences from the previous day and also be a contact for the media in the event they wanted an interview with regard to investigations or other matters. The Media Officer also served as spokesperson for the Police Service in making public statements or announcements. As Media Officer, Scott was involved in the morning executive meetings of the Police Service.

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[260] Evidence of David Scott, Inquiry transcript, vol. 28 (November 27, 2003): 5352-5499

As Media Officer, Mr. Scott was interviewed by a StarPhoenix newspaper reporter, Terry Craig, in preparation of the story on the death of Stonechild which appeared on the front page of the March 4, 1991 edition.[261] Scott testified that he often dealt with Terry Craig. He considered Craig to be an excellent and fair-minded reporter. Interviews such as the one with Craig were generally initiated by the reporter contacting Scott to say that he or she was doing a story on a certain investigation or event. Scott would then inform himself as required prior to meeting with the reporter. Scott would speak to the Investigator and the Supervisor of the investigation file to determine what could be said to the media, particularly where there was a sensitive issue.

Scott agreed that the allegations raised in the StarPhoenix article were serious, as there was a suggestion made that racism was a contributing factor to the lack of an investigation. In the article, Scott denies the allegation there was an inadequate investigation. He is quoted as saying: "I don't agree. A tremendous amount of work went into that case."[262] The article also states that Scott pointed to a hefty file and said investigators pursued every avenue. Scott did not suggest that he had been misquoted in the article. Scott acknowledged that, as Media Officer, he recognized the importance of being forthright and honest with the public. Scott testified that he forwarded comments received from the Investigator or Supervisor in response to Terry Craig's questions.

Scott had no direct recollection of the background to the story, nor his contact with the reporter, Terry Craig. Based on his general practice, Scott believes he would have spoken to the Investigator or the Supervisor, or both.

Scott believes that the hefty file referred to by the reporter may have been one of two files that he routinely carried with him. One contained the current Crime Stoppers files that had been assigned to investigators; the other was a file of the occurrences of the previous 24 hours.

Based on his recent review of the Saskatoon Police Service Investigation file[263] in relation to the death of Neil Stonechild, Scott acknowledged that there could have been more work done on the investigation. At various times in his testimony, Scott asserted that he did not review the reports. At other times, he stated he did not recall whether he had read some or all of the reports.

Scott also acknowledged that the comments attributed to him in the StarPhoenix article were inaccurate. It is clear the statements attributed to Scott that appeared in the March 4, 1991 StarPhoenix article were untrue. The public was seriously misled. The evidence does not establish that the deception was intentional. However, Scott and the Saskatoon Police Service owed a duty to the public to ensure the accuracy of the information conveyed to the public. If he had carefully reviewed the file, the matter may have been investigated further in 1991. As Scott acknowledged in his testimony, transparency and honesty is primary in gaining and maintaining public confidence in the police service.

I note that Scott played a role in initiating the process that ultimately led to the RCMP investigation into the death of Neil Stonechild. Scott was the Chief of Police in early 2000 when there was a flurry of media attention resulting from the freezing deaths of Naistus and

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[261] StarPhoenix Article of March 4, 1991, Inquiry exhibit P-1

[262] StarPhoenix Article of March 4, 1991, Inquiry exhibit P-1

[263] Saskatoon Police Service Investigation File, Inquiry exhibit P-61

Wegner and the allegations of Darrell Night. Scott testified that within two days of the Night allegations, two officers, Hatchen and Munson, disclosed their involvement and were immediately suspended by Chief Scott. In cross-examination, Scott acknowledged that the suspension of Hatchen and Munson may have been several days after he received the disclosure that they had abandoned Darrell Night. Based on his testimony, it is apparent that he received the disclosure with respect to Night somewhat earlier. The public announcement was made on February 7, 2000, but he testified that he had asked Superintendent Weber and Deputy Chief Wiks to investigate the matter over the weekend.

Chief Scott ultimately wrote a letter to the Minister of Justice requesting that another police service be brought in to do an independent investigation of Night's allegations and the other two deaths. As a result of this request, an RCMP Task Force called Project Ferric was established in February of 2000. The Task Force soon after added the investigation of Neil Stonechild's death to its mandate when information about the death was published in the media. Chief Scott instructed members of the Saskatoon Police Service to cooperate fully with the RCMP task force and appointed Deputy Chief Dan Wiks to liaise with the task force.

David Wilton[264]

David Wilton joined the Saskatoon Police Service in 1965 and retired in 1997 at the rank of Superintendent. The majority of his service was spent in plainclothes investigation. He was appointed Inspector in 1985 and, at the time of Neil Stonechild's death, was a Duty Officer. Although Wilton had no specific recollection, records indicate that he was the Duty Officer on November 24, 1990, and November 29, 1990.

The Duty Officer's role is to oversee the shift that is on duty and deal with any major events or problems that may arise either with personnel or incidents on the street. The Staff Sergeant in charge of the platoon would report to the Duty Officer. The Duty Officer in turn would report to the Superintendent of Operations.

Wilton had no recollection of the Stonechild death. However, the finding of a frozen body is something that he would expect to be brought to the attention of the Duty Officer.

Wilton testified that the finding of a frozen body in the circumstances of Stonechild, warranted the calling out of a Plainclothes Investigator. He testified that he would not be surprised if the Patrol Sergeant would call an Investigator directly in such circumstances. If no one is available, the Duty Officer would be contacted. Although, he did not recall the incident, Wilton testified that he would have had no difficulty in calling in an off-duty Investigator if an Investigator was not otherwise available.

In 1990, Wilton attended the morning executive meetings. He testified that a death in the circumstances of Stonechild is a matter that he would expect to be raised at such meetings. If he was not attending the morning meeting, his practice would be to write up the incident and pass it on to the day shift Inspector who would take it to the meeting.

Wilton had no recollection of the March 4, 1991 article in the StarPhoenix[265] or any concerns being raised as a result of the article.

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[264] Evidence of David Wilton, Inquiry transcript, vol. 40 (March 14, 2004): 7637-7703

[265] StarPhoenix Article of March 4, 1991, Inquiry exhibit P-1

A number of statements attributed to Wilton in an interview with the RCMP Task Force were put to Wilton. A summary of the interview with the RCMP states, in part, as follows:

> "He stated he 'can't even remember Stonechild coming in or going out of cells – or what officers might have arrested him'. Wilton recalled there being 'a fair bit of news and talk about it. That's one case I had little or next to nothing to do with.'
>
> – Wilton was asked how he had the feeling Stonechild had been arrested. His reply was 'It's the feeling I had. Back in 1990 I got the feeling a couple of officers brought him in (to the cells) and then took him out.'
>
> – Wilton said that in the course of his duty, he spent a lot of time in the Detention facility as well as the Communication centre. 'I don't recall Stonechild, either seeing him or hearing of him.'
>
> – Wilton was asked how he became aware that Stonechild had been arrested. He said there had been stories in the paper and from reading those stories, he had a feeling 'in the back of my mind he (Stonechild) was brought in and taken out because there was no charge or he wasn't drunk enough to hold.'
>
> – Wilton said he remembered the investigation into the death. 'I believe his family raised the issue about the police dropping him off.' He could not recall who was in charge of the Morality Unit at the time of the investigation."[266]

At the hearing, Wilton did not dispute any of these statements attributed to him. However, he maintained that the only knowledge he had of the Stonechild incident was gleaned from media reports following his retirement.

It is interesting to note that while Wilton expected he would be advised of a significant event such as the locating of a frozen body, he went beyond simply stating he had no recollection of being advised. He stated "It appears I wasn't told".[267] He softened this somewhat and stated "I don't recall being told by anyone about this body being found."[268] However, later he stated unqualifiedly that, "No, I wasn't aware he was found on the day he was found."[269] I note that the testimony of the Communication Centre Staff Sergeant Kirk Dyck was that the duty officer would have been automatically notified by the Communications Centre in such circumstances.[270]

It is not clear from the evidence whether or not Dave Wilton was notified on November 29, 1990, that a frozen body was found in the north industrial area of Saskatoon. There is, however, no evidence that the Duty Inspector on November 29, 1990, whose role was to oversee the shift on duty and deal with any major incidents on the street, played any part in supervising the investigation of the scene where Stonechild was discovered.

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[266] Summary notes of Interview of Dave Wilton by RCMP Inspector McFadyen on August 30, 2000, Inquiry exhibit P-176

[267] Evidence of Dave Wilton, Inquiry transcript, vol. 40 (March 15, 2004): 7677

[268] Evidence of Dave Wilton, Inquiry transcript, vol. 40 (March 15, 2004): 7679

[269] Evidence of Dave Wilton, Inquiry transcript, vol. 40 (March 15, 2004): 7685

[270] Evidence of Kirk Dyck, Inquiry transcript, vol. 24 (October 23, 2003): 4621

Frank Simpson[271]

Frank Simpson served 35 years with the Saskatoon Police Service commencing in 1958 and retiring in 1992. While he was not certain of the precise dates, in 1990, at the time of the Stonechild death, it appears he was the Inspector in charge of plainclothes investigations. He was soon after promoted to Superintendent in charge of criminal investigation.

As Inspector in charge of plainclothes investigations, he would regularly meet with the staff sergeants in charge of each investigative unit. He did not recall ever having to deal with issues as to which investigative unit should take responsibility for a particular investigation. Decisions to close a file were left to the Staff Sergeant in charge of the unit. The Inspector did not play any role in reviewing such decisions.

Simpson had no recollection of the death of Neil Stonechild or any issues surrounding the investigation of that death.

Simpson would attend morning executive meetings with the Chief of Police and other executive officers. He had no recollection of the March 1991 StarPhoenix article[272] or the issues raised in the article ever being discussed at the executive meeting. He did acknowledge that that is the sort of thing that would be raised by the Chief or one of the Deputies at the executive meetings. There is no evidence to confirm that there was such a discussion at the executive meetings in 1990 or 1991.

Murray Montague[273]

Murray Montague joined the Saskatoon Police Service in 1959. He was appointed Deputy Chief in charge of operations in 1988 and retired with this rank in March of 1994. The responsibilities of the Deputy Chief of Operations were largely administrative and involved planning, budgeting, discipline and staffing. He had overall responsibility for the investigative side of the Police Department. Montague attended the daily meetings of the executive officers. There were no regular meetings of the investigative personnel. Montague had no recollection of any of the circumstances surrounding the death of Neil Stonechild. He did not recall the matter ever being a subject of discussion amongst the senior officers of the Saskatoon Police Service. He had no recollection of the March article in the StarPhoenix or any issues being raised as a result of the publication of that article. He did acknowledge that such a matter could "possibly" be raised at the executive meeting.

Montague testified that the Media Relations Officer was the one responsible for dealing with the media, but he would typically seek instructions or consult with the senior officers as to the form of a response that should be provided to concerns raised about police conduct. He recalled that happening from time to time.

Joe Penkala[274]

Joe Penkala joined the Saskatoon Police Service in 1954. From 1982 until his retirement, he was Chief of Police. Penkala retired in August of 1991, but did not serve full-time in the months leading up to his retirement. He used up accumulated holidays from December 1990 to the middle of January 1991 and from the 1st of June through to the end of August. He was effectively out of office at the end of June.

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[271] Evidence of Frank Simpson, Inquiry transcript, vol. 19 (October 15, 2003): 3575-3644

[272] StarPhoenix Article of March 4, 1991, Inquiry exhibit P-1

[273] Evidence of Murray Montague, Inquiry transcript, vol. 19 (October 15, 2003): 3644-3709

[274] Evidence of Joe Penkala, Inquiry transcript, vol. 19/20 (October 15/16, 2003): 3709-3817

Chief Penkala had instructed his subordinates, including the duty inspectors, that he wished to be advised of any serious incident or crime that occurred, and, if he was not on duty, this information should be made known to him at home at any time of the day or night.

Penkala had no recollection of the death of Neil Stonechild or any circumstances surrounding the death or investigation. Penkala stated categorically that he was not told of the Neil Stonechild death. He did not equivocate by saying he could not recall hearing of the death.

Penkala acknowledged that there was a direct relationship between the Media Relations Officer and the Chief of Police. If criticisms were directed at the police service in terms of investigation or lack of investigation, he would expect those issues to be brought to his attention and direction would be sought as to how to proceed. If he was satisfied there was a lack of investigation, he would direct that the particular incident be re-examined.

Penkala had no recollection of seeing the March 1991 StarPhoenix article.[275] After reviewing his daily planner for the year 1991, Penkala acknowledged that he was working in early March when the story appeared in the StarPhoenix. He recognized the seriousness of the allegations and criticisms being made of the police service. He testified that had these criticisms been brought to his attention, he would have immediately followed up with his Deputy Chief of Operations and would have instructed him to review the entire incident and provide a report. If he still had concerns, he would have directed further investigation or action to be taken.

Penkala indicated that the Stonechild death was such that he would expect it to be brought to the attention of the executive meeting of senior officers held each morning. He has no recollection of the matter ever being raised at the executive meeting.

Penkala was referred to three small articles that appeared in the StarPhoenix on November 30, December 1, and December 3, 1990, all reporting on the location of the frozen body in the north end of the City and the subsequent identification of the body. Penkala had no recollection of seeing these articles.

He was asked to review the Saskatoon Police Service Investigation file on the death of Neil Stonechild.[276] He readily acknowledged that the investigation was incomplete and went further by stating that there appeared to be negligence in the investigation. Penkala testified that the investigation should not have been concluded on December 5, 1990. He stated that fact should have been obvious to the Supervisor reviewing the report. Penkala could offer no explanation as to how this could happen.

James Maddin[277]

Jim Maddin joined the Saskatoon Police Service in 1972 and retired in 1997. From January 1st, 1994 to May 1st, 1995, he was assigned as a Detective in the Major Crimes Unit. At the time of his retirement, he had obtained the rank of Superintendent. Following his retirement, he served a term as Mayor of the City of Saskatoon.

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[275] StarPhoenix Article of March 4, 1991, Inquiry exhibit P-1

[276] Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[277] Evidence of James Maddin, Inquiry transcript, vol. 29 (November 28, 2003): 5503-5604

Maddin had no involvement in the investigation of the death of Neil Stonechild. He did recall hearing that a frozen body had been found in the north end of the city. He also testified that he subsequently heard stories circulating within the police department and the names of officers Hartwig and Senger were connected with these stories. He was not specific as to when he had heard these stories other than to state it was some time after Stonechild's body had been located and prior to his retirement in 1997. He was unable to identify the source of the stories. He was also unable to identify the nature of the "connect" of Cst. Senger and Cst. Hartwig with the death of Stonechild, and the stories that circulated.

Jim Maddin did confirm that a transcription of an interview with the CBC was accurate.[278] In that interview he was quoted as saying: "With respect to the Neil Stonechild file, there was certainly concerns raised in and around the police service after the event. I cannot pin down exactly when, but I know that it did become knowledge to most of the members that gee, there may have been some involvement by a couple of members of the police service with Mr. Stonechild at about the time of his demise."

Maddin also acknowledged that he had made statements in the same interview with the CBC indicating "there were groups working within the police service that were successful in keeping information contained". However, when he testified, he stated that he did not believe that there was "contained" information with respect to Neil Stonechild that had been withheld from superiors or the public.

In a summary of an interview with the RCMP[279], the RCMP recorded: "Maddin recalls reference to Stonechild being in the hands of the police, stories are going around – the police have dealt with him. These two names are out there." Maddin acknowledged that he made a statement to that affect to the RCMP. Maddin testified that, in his opinion, these stories and rumours would have been known to senior members of the police service. However, he also indicated that there was, at times, a disconnect between the lower ranks and the senior ranks and, that information circulated amongst the lower ranks, did not always get to the higher ranks.

Maddin also acknowledged as accurate another statement attributed to him on the summary of his interview with the RCMP. He stated: "I know that it was known that these guys were being looked at." He also acknowledged that his reference to "these guys" was a reference to Constables Hartwig and Senger. On cross-examination, Maddin stated that he had not heard stories indicating that Constables Hartwig and Senger had done anything improper or untoward in relation to Neil Stonechild.

Maddin's evidence is significant on two grounds. First, he belongs to the very small group of police witnesses who could even recall the death of Neil Stonechild. By far, the majority of police witnesses who testified, professed to have no memory, including some witnesses who were directly or indirectly involved in the investigation, and others who should have been involved in the supervision of the investigation. Second, Maddin is the only police witness to testify that he was aware that Cst. Hartwig and Cst. Senger's names were tied to the death of Neil Stonechild prior to the RCMP Investigation which began in 2000.

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[278] Excerpts of Transcript of CBC Interview of Jim Maddin, June 9, 2003, Inquiry exhibit P-121

[279] Summary of Interview of James Maddin by RCMP C./Supt. McFadyen on June 17, 2003, Inquiry exhibit P-122

Constable Brett Maki[280]

Cst. Maki's evidence does not directly relate to the investigation of the death of Neil Stonechild. However, I have concluded a summary of his testimony should be included, as the evidence he provided on two disparate subjects adds to my understanding of the facts.

Cst. Maki joined the Saskatoon Police Service in January 1989. He responded to a complaint of a robbery at Humpty's Restaurant on October 26th, 1990. He had no independent recollection of the event but he was able to refresh his memory from his notes and an Incident Report he filed at the time.

On November 10th, 1990, Cst. Maki recorded in his notebook that the suspects in the Humpty's robbery had been identified as Jason Roy and Elton Dustyhorn. He indicated that this information was likely read out at Parade so that other officers would be aware that these persons were wanted as suspects in the robbery.

On November 17th, 1990, Cst. Maki and his partner spoke with Elton Dustyhorn and Terrance Dustyhorn. A statement was taken from Terrance Dustyhorn implicating Jason Roy as the person responsible for the theft at Humpty's. Maki did not recall what he did with this information. He testified that he would normally attempt to contact the suspect. If he was unable to contact him he would normally place a warrant in the system for the arrest of the suspect. There is no evidence that a warrant was in fact issued for the arrest of Jason Roy. Maki stated that if he had encountered Jason Roy he would probably have arrested him.

On cross-examination, Cst. Maki acknowledged that from time to time he would arrest a person who was causing a disturbance and drop him off at a safe place several blocks away. He described this as "unarresting" the person.

Cst. Maki's testimony establishes that there is some basis for Jason Roy to believe that he was wanted by the Saskatoon Police on November 24th/25th, 1990.

6 | The Saskatoon Police Service at the Present Day

Staff Sergeant Murray Zoorkan[281]

Murray Zoorkan joined the Saskatoon Police Service in 1972. He has been a detective with the Saskatoon Police Service for approximately 15 years. His current rank is Staff Sergeant in the General Investigation Section.

In January of 2000, Zoorkan was assigned to Saskatoon Police Service Cold Squad. The Cold Squad was created in 2000 as a result of a former officer's complaint to the Department of Justice about the quality of Saskatoon Police Service investigations. Zoorkan's function in the Cold Squad was to gather and review all unsolved homicide and long term missing person's files.

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[280] Evidence of Brett Maki, Inquiry transcript, vol. 11 (September 24, 2003): 2054-2098

[281] Evidence of Murray Zoorkan, Inquiry transcript, vol. 31 (January 6, 2004): 5914-6065

In July of 2000, Zoorkan became aware that the RCMP investigators were looking for notebooks of certain Saskatoon Police Service officers. As a result of his experience on the Cold Squad, Zoorkan knew that there were some notebooks maintained in old murder files. He uncovered the notebook of Sgt. Keith Jarvis for the period of July 1990 to December 1990 in one such file. Jarvis's notebook was turned over to the RCMP on July 19, 1990.

In November 2000, Deputy Chief Dan Wiks formerly appointed S/Sgt. Zoorkan to assist the RCMP Task Force. As liaison, S/Sgt. Zoorkan was assigned to cooperate with the RCMP investigators in responding to their requests and the passing on of information. S/Sgt. Zoorkan did not conduct his own investigation of the matters under review by the RCMP. It was, however, his responsibility to advise Deputy Chief Wiks if he came across information that indicated Saskatoon Police Service members had committed an offence. S/Sgt. Zoorkan testified that the Saskatoon Police Service does pursue wrongdoers within the Service, and when members are wrongly accused, the Saskatoon Police Service defends its own. Under re-examination by Commission Counsel, Zoorkan candidly agreed that the objectivity of Saskatoon Police Service in reaching the conclusion that a member has been wrongfully accused is a potential concern.

Deputy Chief Daniel Wiks[282]

Deputy Chief Daniel Wiks was the most senior member of the current complement of Saskatoon Police Service to testify at the Inquiry. He joined the Saskatoon Police Service in 1972 and became Deputy Chief in 1998. In November of 1990, he was a Corporal working in either Detention or Communications.

RCMP Task Force

Deputy Chief Wiks was designated by Chief Dave Scott to be the administration liaison between the Saskatoon Police Service and the RCMP Task Force. He was instructed to cooperate fully with the RCMP Task Force and provide them any and all information that they might require. In this capacity, Wiks had a number of meetings with Chief Superintendent McFadyen of the RCMP in 2000 and 2001. Of particular significance was a meeting in August of 2000. At that meeting, the information the RCMP had acquired with respect to the death of Neil Stonechild, up to August 2000, was reviewed. Ken McKay, from the Department of Justice, attended the meeting. Wiks testified that the purpose of the meeting was to go through the file to establish whether or not there were reasonable grounds to believe that Cst. Hartwig and Cst. Senger had committed a criminal offence. In November 2000, the RCMP advised Deputy Chief Wiks that they had placed wiretaps on the telephones of Cst. Hartwig and Cst. Senger. In July of 2001, Wiks was advised that the RCMP had sent the file to Saskatchewan Justice for review. In August of 2002, Wiks was advised that the Justice Department had reviewed the file and were not recommending charges be laid. This evidence is significant in light of subsequent statements made by Deputy Chief Wiks to the press in March of 2003.

All of the briefings provided by the RCMP were verbal. At some of the briefings, Wiks and others were shown documents or photographs, but no copies were provided. Wiks did not receive any documents arising from the RCMP investigation until he received disclosure from Commission Counsel in July of 2003.

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[282] Evidence of Depty Chief Daniel Wiks, Inquiry transcript, vol. 33-38 (January 8/9, March 8/11, 2004): 6362-6899 and 7124-7381

The Saskatoon Police Service made a conscious decision not to be involved in the RCMP investigation as they wished to avoid any suggestion that there was collusion between the Saskatoon Police Service and the RCMP.

In March 2001, Cst. Louttit turned over the copy of the Saskatoon Police Service Investigation File[283] on Stonechild's death to Deputy Chief Wiks. Wiks delivered it to S/Sgt. Zoorkan with instructions to provide it to the RCMP. Deputy Chief Wiks did not copy the file but he did read it when he received it from Cst. Louttit.

Changes Made By Saskatoon Police Service

Deputy Chief Wiks outlined a number of changes made by the Police Service since 1990. Of significance to the issues before this Inquiry, was the establishment of a Suspicious Death Review Committee. The purpose of this committee is to review all cases of suspicious deaths where charges have not been laid to determine whether further investigation is required prior to closing the file.

Wiks also outlined a number of improvements in the training that has been made available to officers since 1990 and other policies and check-lists that have been implemented with respect to the investigation of sudden deaths and homicides. I am satisfied that significant improvements have been made in these areas since 1990.

Wiks reviewed the current process for handling complaints against the Police Service. He also outlined discussions taking place between Chief Russell Sabo, the Police Commission, and the Justice Department, aimed at revising the complaint process.[284]

The Stonechild Investigation

Deputy Chief Wiks provided his assessment of the 1990 investigation into the death of Neil Stonechild. His assessment was based on his review of the file and his extensive experience as a police officer, including several years as a Major Crime Investigator. In his view, Cst. Lagimodiere, met the responsibilities of a first responder. He also felt that Sgt. Morton, the Identification Officer, properly carried out his duties. Deputy Chief Wiks was ambivalent in his assessment of the actions of the Patrol Sergeant, Michael Petty. In part, this is because it was not clear whether an Investigator had been called. Deputy Chief Wiks indicated it was the Patrol Sergeant's responsibility to call an Investigator. Wiks was also critical of the lack of efforts made to locate Stonechild's missing shoe. In the absence of the Investigator, this would be the responsibility of the Patrol Sergeant.

In reviewing Sgt. Jarvis's investigation, Wiks started by noting it was not Jarvis's fault that he did not get called to the scene. He assumed that if he had been called he would have attended. He noted that Jarvis was working the evening shift, 3:00 a.m. to 3:00 p.m., on November 29th, 1990. He suggested that Sgt. Jarvis could, and likely should have, requested to switch to a day shift on November 30th, so he could follow-up on the investigation. With respect to Sgt. Jarvis's report of November 30th, 1990, Wiks noted that there was no indication of how he came to the conclusion that the tips relating to Gary Pratt were unfounded and were the result of someone trying to get back at Pratt. He also noted that it is not clear how he knew that Stonechild was at Snowberry Downs on November 24th, 1990. He further observed that the report does not indicate how he learned that Cst. Hartwig had attended the residence at Snowberry Downs. He suggested a request should have been made of Cst. Hartwig to leave an Investigation Report detailing what Cst. Hartwig knew about his attendance at Snowberry Downs. There is no indication that this was done.

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[283] Saskatoon Police Service Investigation File, Inquiry exhibit P-61

[284] These discussions are summarized in a memorandum from Chief Sabo to the Chairperson of the Board of Police Commissioners dated December 1, 2003, Inquiry exhibit P-168

Deputy Chief Wiks noted that while statements were taken from Jason Roy and Trent Ewart, further statements should have been obtained. He also noted the lack of any record that Major Crimes had been contacted in response to Sgt. Jarvis's request that the matter be turned over to Major Crimes. Deputy Chief Wiks went so far as to suggest that Sgt. Jarvis should have contacted his Staff Sergeant the next day to confirm that the file had been transferred.

With respect to Sgt. Jarvis's report of December 5th, Deputy Chief Wiks again expressed his concern as to how Sgt. Jarvis formed the opinion that the Crime Stoppers tip was unfounded. Deputy Chief Wiks suggested statements should have been taken from a number of other people, including the two people that found the body, the ambulance staff, and all of the people noted in the report. Deputy Chief Wiks stated, unequivocally, that when the file was concluded on December 5th, there needed to be a lot more work done. He also noted there was a responsibility on the Staff Sergeant in charge of the section to review the files to ensure that the file was not concluded prematurely. S/Sgt. Bud Johnson did not do so.

Public Response

In May 2003, Deputy Chief Wiks was the acting Chief of Police. He was interviewed by a reporter for the StarPhoenix, James Parker. In an article[285] published on May 2, 2003, the following statement was attributed to Wiks with respect to the RCMP investigation of the Stonechild death:

> "The only reason we would suspend someone is if we had some indication that there was some wrongdoing. We had no indication of that whatsoever. And we still don't."

Deputy Chief Wiks acknowledged that he was correctly quoted and the statement was not accurate.

The article goes on to report that Wiks said the Department did not know Cst. Hartwig and Cst. Senger were considered suspects. Wiks acknowledged that, at that time, he knew they were suspects and the statement to the contrary was not accurate. What would prompt Deputy Chief Wiks to make such statements? No satisfactory explanation was provided.

At the time this article appeared in the StarPhoenix, it is likely that most members of the Saskatoon Police Service knew that Cst. Hartwig and Cst. Senger were suspected by the RCMP of involvement in the death of Neil Stonechild. What message is sent to the members about the importance of integrity and transparency in dealing with allegations of police misconduct when such misleading statements are made to the public by the senior ranking officer? The answer is clear, and it is significant that such message was sent on the eve of the commencement of the Inquiry.

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[285] StarPhoenix Article of May 2, 2003, Inquiry exhibit P-140

The Issues Team

Deputy Chief Wiks was instructed by Chief Sabo to assemble a group of people to address any needs or concerns relating to the Inquiry. This group became known as the "Issues Team". The Issues Team was assembled in early July 2003. It consisted of Deputy Chief Wiks, S/Sgt. Penny, acting Inspector Constantinoff, Cst. Ballard, Supt. Brost, Cst. Maddiford, Superintendent Pennell, and Inspector Atkinson. Chief Sabo was described as an ad hoc member of the team who would drop in and get updates from time to time. S/Sgt. Penny was assigned as liaison to the Commission. Acting Inspector Contantinoff was assigned to media relations. Cst. Ballard was responsible for research and acted as recording secretary. Superintendent Brost was liaison with the RCMP. Cst. Maddiford was the Police Association representative on the team, and was responsible for dealing with any concerns of Cst. Senger and Cst. Hartwig. Superintendent Pennell was in charge of security. Inspector Atkinson was designated as the Inquiry observer, charged with attending the Inquiry hearings and providing updates to the members.

The stated purpose of the Issue Team was to deal with security issues surrounding the Inquiry, to assist the Commission by providing information as required, and to deal with communications issues. The communications issues involved both contact with the media and internal communications within the police force. The latter involved updating the platoons on a daily basis as to the evidence presented at the hearings.

As the evidence unfolded, and the Inquiry was provided with the minutes of the meetings of the Issue Team, it became apparent that the Issues Team assumed another role.

In early July, the Issues Team began looking for an expert to comment on the marks on Stonechild's nose and right wrist. They first contacted Dr. Ernie Walker of Saskatoon who they identified as an expert in blunt trauma marks. Dr. Walker was provided with copies of the autopsy photographs which he apparently reviewed. He was not called to testify. Later, it seems, it was decided that Dr. Walker was simply a resource person to assist in identifying an expert in the area.

The Saskatoon Police Service, through the Issues Team, then contacted the FBI attache in Ottawa, and obtained the name of Dr. Micheal McGee, a Pathologist in Minneapolis. Dr. McGee was provided with photographs and other information. A member of the Issues Team, together with legal counsel, went to Minneapolis to consult with him. A notation in the Minutes of August 25, 1993, states that Dr. McGee would testify "that the wounds were not consistent with an assault; consistent with fall on ice or snow; definitely not a blow."

A request was made to Commission Counsel to call Dr. McGee. He was characterized as a crucial witness. Mr. Hesje interviewed Dr. McGee, but declined to call him. Mr. Rossmann was advised of this decision in a letter dated October 2, 2003. Mr. Hesje indicated that he did not believe his evidence was significantly different from that of Dr. Dowling. I quote from the letter:

> "Based on my interview with Dr. McGee, I believe he only has two things to say that are somewhat different than Dr. Dowling. He indicates that he does not believe the abrasions to the nose are consistent with being caused by twigs or branches. He indicates that they are too straight and too parallel. He indicated they are most probably caused by a formed edge. He describes a formed edge as one that is prepared, created or machined such as a block of wood or a piece of metal.

> The second part where he is somewhat different from Dr. Dowling is respect to the imprint on the wrist. His opinion is that the imprints are most likely post mortem. You'll recall that Dr. Dowling testified that he could not tell whether they were post mortem or anti mortem."[286]

The letter went on to state that Dr. McGee would not rule out handcuffs as a cause of the abrasions. Mr. Hesje concluded the letter by pointing out that the Rules allow the Police Service to make application to me to call Dr. McGee. I received no such application. The Issues team later identified Dr. Lew as an expert in this area and requested she be called to testify. Mr. Hesje acceded to this request and called Dr. Lew. I review her evidence later in this Report.

Deputy Chief Wiks initially suggested that the purpose in contacting Dr. McGee was to assist in understanding the report of Gary Robertson and, in particular, photogrammetry. The minutes of the meetings of the Issues Team disclose that they were advised that Dr. McGee knew nothing about photogrammetry. I am satisfied that the real purpose was to obtain an opinion that the marks on Stonechild's nose and right wrist were not caused by handcuffs. They ultimately got such an opinion from Dr. Lew.

The Issues Team functioned as a defense team intent on rebutting any suggestion of wrongdoing on the part of members of the Service. Apart from the testimony of Jason Roy, the evidence viewed as potentially the most damaging, was that of Gary Robertson, a photogrammetrist who had provided a report to the RCMP indicating that the marks on the nose and the wrists of Stonechild were consistent with handcuffs. Discrediting his report became the focal point of the Issues Team.

When this evidence emerged at the hearing, I asked Deputy Chief Wiks why, if he had concerns about the evidence or opinions obtained by the RCMP, he did not ask the RCMP to look into the concerns. His curious response was that they thought the RCMP investigation was concluded unless new evidence came to light indicating criminal misconduct. At this point, a number of counsel came to the defense of Deputy Chief Wiks by arguing that any party was entitled to test and challenge evidence presented at the hearings and that is all the Issues Team was doing. The right of parties to test the evidence is unquestionable. It is a necessary part of the fact finding process, at least in an adversarial context. However, the objections failed to take into account the proper role of the Police Service.

The Police Service is charged with law enforcement and discipline of its members. Faced with evidence of possible police misconduct, its role is not to be an advocate for its members. The proper role of the Police Service is to remain objective and to carefully consider all evidence. Its role is fundamentally different from that of the Police Association and the individual members whose conduct is at issue. Counsel for those parties are expected to be advocates for their clients and to challenge any inculpatory evidence. Throughout the hearings, the position of the Saskatoon Police Service was indistinguishable from that of the Association and the individual members whose activities were brought into question.

The picture that emerges from a review of the Minutes of the meetings of the Issues Team is not one of objectivity. The focus is on how the Police Service can support Cst. Hartwig and Cst. Senger in light of the allegations being made against them, and how it can control and respond to any damaging evidence. There is even a suggestion that if Cst. Hartwig and Cst. Senger are placed on leave, the public should be told that they have been reassigned. There is no indication of any consideration as to what can be done to determine if there has been misconduct on the part of their members.

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[286] Letter from Commission counsel to Barry Rossmann, Q.C. dated October 2, 2003, Inquiry exhibit P-174

S/Sgt. Zoorkan made the comment that in his experience, Police are defenders of their own if they have been unjustly accused. This exchange followed:

> "Q. Now, I guess the problem or the potential concern though, is when and how do you come to the conclusion that one is unjustly accused?
>
> A. Oh, no doubt about it. You're right.
>
> Q. And if you come to that conclusion too soon you're rallying around and defending your own when perhaps you shouldn't be?
>
> A. You're right.
>
> ...
>
> Q. You testified that you thought it was a positive thing when the RCMP were called in, in response to certain now well-known situations of bodies being discovered on the outskirts of town and the Darrell Night situation.
>
> A. Yes.
>
> Q. I suggest to you that part of the reason that's positive is to have an outside force brought in is the potential problem for you, and by you I mean the force, the investigative arm of the force, to be objective in looking at their own people?
>
> A. No doubt about it.
>
> Q. That is a concern?
>
> A. Always.
>
> Q. That you could lose your objectivity?
>
> A. Definitely."[287]

I recognize that it is not easy to maintain objectivity. I also understand the natural tendency within an organization such as the Police Service to rally around and support fellow members. A sense of loyalty to other members can be beneficial, perhaps even necessary, in a police force. However, it can also lead to an "us versus them" mentality where loyalty to fellow officers is placed ahead of loyalty to duty. That must be guarded against.

I do not interpret the Terms of Reference as encompassing a general investigation into the Saskatoon Police Service. As such I do not intend to draw any conclusions as to general attitudes or culture within the Service.

However, a number of things came to light in the course of the Inquiry that raise concerns. The activities and posture of the Issues Team is but one. Why does Sgt. Jarvis not pursue the possibility that Neil Stonechild was last seen in the custody of the police? Why are both

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[287] Evidence of S/Sgt. Zoorkan, Inquiry transcript, vol. 31 (January 6, 2004): 6063-6064

Cst. Louttit and Cst. Tarasoff told to stay out of the matter? Why does the Saskatoon Police Service state publicly in March of 1991 that the death had been thoroughly investigated when it clearly had not? On this point, it is significant that Cst. Louttit testified he dropped the matter after the March article appeared in the StarPhoenix. He has a conviction that the matter has not been properly investigated. He hears a statement from the official spokesman for the Service that it was thoroughly investigated. Is it surprising that he dropped the matter? Why does Deputy Chief Wiks publicly state in May of 2003 that the Department did not know that Cst. Hartwig and Cst. Senger were considered suspects and that there was no indication of wrongdoing whatsoever? All of these matters should cause the administration to carefully consider its level of commitment to transparency and openness in the face of allegations of police misconduct.

7 | The RCMP Investigation of The Death of Neil Stonechild

Chief Superintendent Darrell McFadyen[288]

Darrell McFadyen joined the Royal Canadian Mounted Police in 1968. He became a Chief Superintendent for the RCMP in August of 2001. As Chief Superintendent, he is the second in command of RCMP "F" Division Saskatchewan.

The testimony of Chief Superintendent McFadyen provided the Inquiry with background concerning the RCMP investigation into the death of Neil Stonechild and the potential involvement of members of the Saskatoon Police Service.

He confirmed that on February 16, 2000, the Minister of Justice requested that the RCMP conduct an independent investigation of the allegation of Darrell Night that he had been taken by members of the Saskatoon Police Service to the outskirts of the City of Saskatoon and dropped off. The Minister of Justice also asked the RCMP to investigate the freezing deaths of two Aboriginal men in the south industrial area of the City and to determine whether or not the members of the Saskatoon Police Service had a practice of dropping individuals off at the outskirts of the City. The two men who had been found frozen were Rodney Naistus and Lawrence Wegner.

The RCMP formed a task force to conduct these investigations under the name Project Ferric. Inspector Darrell McFadyen (as he then was) was assigned as the overall Task Force commander. Sergeant Ken Lyons (as he then was) was placed in charge of the hands-on management of the investigations. At the height of Project Ferric, the RCMP had assigned around 32 investigators and support staff to work on the Task Force. McFadyen estimated that the RCMP expended on Project Ferric approximately $749,000 on overtime, travel, and supplemental clerical expenses.

Shortly after the creation of Project Ferric, the Saskatoon StarPhoenix published an article describing the suspicious circumstances surrounding the death of Neil Stonechild. It was decided by the RCMP that this death fit within its mandate. On February 22, 2000, Project Ferric was extended to the investigation of the death of Neil Stonechild. Constable Jack Warner (as he then was) was assigned as the lead Investigator of the Stonechild file on February 25. Over the next 2½ years the RCMP interviewed approximately 200 witnesses in regard to the Stonechild death. The RCMP also retained experts to assist in the investigation. Dr. Graeme Dowling, a forensic pathologist and Chief Medical Examiner for Alberta, was engaged to review the original autopsy of Stonechild and to conduct a second autopsy. Gary Robertson, the photogrammetrist, was hired to measure marks that were apparent in the post-mortem photographs of Stonechild's body and, later, to compare these measurements to the measurements of handcuffs used by Saskatoon Police Service in 1990. As a result of the investigation, the RCMP identified two suspects: Cst. Lawrence Hartwig and Cst. Brad Senger.

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[288] Evidence of Darrell McFadyen, Inquiry transcript, vol. 32/33 (January 6/7, 2004): 6068-6235 & 6258-6266

Chief Superintendent McFadyen testified that as the scope of Project Ferric expanded, the task force required a contact within the Saskatoon Police Service who could advise RCMP investigators on the organization, culture and personnel of the Saskatoon Police Service at various points of time. Staff Sergeant Murray Zoorkan was appointed by the Saskatoon Police Service to liaison with the RCMP. McFadyen testified that the relationship between the Saskatoon Police Service and the RCMP throughout the investigation was professional and that the RCMP received the full cooperation of Saskatoon Police Service.

Chief Superintendent McFadyen gave evidence that he regularly briefed the Saskatoon Police Service on the progress of the Stonechild investigation. These briefings generally occurred through meetings with Deputy Chief Dan Wiks of the Saskatoon Police Service. On September 29, 2000, Chief Superintendent McFadyen met with Deputy Chief Wiks to discuss the newly discovered notebook of Sgt. Keith Jarvis. In March of 2001, the two met to discuss the discovery of a copy of the Saskatoon Police Service investigation file. Wiks also was advised at this meeting that Gary Pratt was eliminated as a suspect as a result of investigative measures. On April 25, 2001, McFadyen contacted Wiks to advise him of the results of the second autopsy of Stonechild. McFadyen met with Wiks and Interim Chief Matthews on July 23, 2001, for the purpose of bringing Matthews up to speed. McFadyen provided a detailed account of the evidence the RCMP had uncovered to date, including CPIC evidence and the photogrammetric report of Gary Robertson. On November 16, 2001 and December 18, 2001, Wiks and McFadyen met to discuss investigative measures that the RCMP pursued with respect to a member of the Saskatoon Police Service. On January 2, 2002, McFadyen met with Chief Sabo and Deputy Chief Wiks for the purpose of bringing Chief Sabo up to speed in regard to the Stonechild investigation. The evidence uncovered by the RCMP to date was discussed, including the photogrammetric evidence of Gary Robertson.

In June of 2002, the RCMP provided the Department of Justice with a report concerning the RCMP investigation into the death of Neil Stonechild. On August 8, 2002, McFadyen was informed that the Department of Justice was not recommending charges in relation to the Stonechild investigation.

In July of 2003, Deputy Chief Wiks approached Chief Superintendent McFadyen concerning the photogrammetric evidence of Gary Robertson. Wiks advised McFadyen that he had real concerns with the evidence of Gary Robertson, and that he wanted to obtain another assessment. While Chief Superintendent McFadyen testified that he was not pleased that the Saskatoon Police Service was pursuing another assessment, he told Deputy Chief Wiks to proceed with the assessment.

8 | The Expert Evidence – Forensic and Medical Witnesses

A good deal of medical evidence was placed before me regarding the physiological cause of Neil Stonechild's death, and the nature of the injuries that were apparent on his body when he was found. In this section, I review the testimony of the physicians that were called upon as witnesses at the Inquiry hearings; both those that were involved with the investigation of Stonechild's death in 1990, and those that were consulted more recently. I begin with a review of testimony of Dr. Fern, the Coroner who was called to the scene where Stonechild's body was found.

Dr. Brian Fern[289]

Brian Fern was the Coroner appointed to the Stonechild investigation. He was qualified to practice in Manchester, England in 1961. After five years of practice he moved to Milden, Saskatchewan where he resided from 1966 to 1970. In that time he was called to investigate an accident and served as the Coroner. In 1970, he moved to Saskatoon and has been in general practice since, primarily doing surgery. He remained an active Coroner throughout that time. He had no special training as a Coroner.

In his opening testimony, Dr. Fern outlined the work of coroners. He explained that if there are any suspicions that a death might not be entirely due to natural causes, a Coroner would normally be called. Under those conditions the Coroner is required to identify the deceased and establish how, when and where that person died. The Coroner may also make recommendations as a result of his investigation in order to ensure that similar deaths do not occur in future. He or she functions in co-operation with the police department and can request the assistance of the police. The police however, he says, do the primary investigation.

The Doctor also explained how the function of a Coroner has changed over the years. He testified that today a Coroner rarely calls for an inquest, that is, a formal hearing to investigate the circumstances surrounding a person's death. The Chief Coroner may call for an inquest.

He recalled attending at the Stonechild death scene. He determined that the person found was deceased and then tried to identify the body. He described his function in assessing a death scene and trying to identify the cause of death. He noted that factors such as footprints and articles of clothing may be looked at, although, he indicated, that the police were primarily responsible for examining such matters. He was fairly sure that he was told at the scene that the deceased person was a young offender and that the officers knew the deceased's identity. However, under cross-examination he acknowledged that his notes[290] of the call from the Saskatoon Police Service indicate that he was initially given an age of about thirty for the deceased, and that he did not have a clear recollection of when he was told that the deceased was a young offender.

He observed the body was "quite frozen" and instructed the police to turn the body over for observation. He did not see any wounds that were obvious, such as a gunshot or something of that kind, and apparently did not notice the cuts on Stonechild's face. I add that the frozen condition of the body might, to a degree at least, have disguised the injuries. I base that observation on the photograph of Mr. Stonechild's face when the body was turned over.

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[289] Evidence of Dr. Brian Fern, Inquiry transcript, vol. 10 (September 23, 2003): 1700-1855

[290] Notes of Dr. Brian Fern, Inquiry exhibit P-45

He also explained the process of rigor. He confirmed he did not make any particular notes at the scene because there were photographs taken at the scene. He did observe that it was a strange place for a body to be found and that there were obvious questions to be answered: "How did he get there?", "Why was he not on the roadside?" The doctor ordered the body to be moved to St. Paul's Hospital in Saskatoon and gave directions for an autopsy. He explained that an autopsy would be required where there was an unexplained death and particularly where the person who was deceased was only 17 years old. He assigned Dr. Jack Adolph to carry out the autopsy. He confirmed that the autopsy report would influence his decision as to whether to call an inquest.

Dr. Fern's notes indicate that at some point he was informed of the age of the deceased and was told that he was a young offender absent without leave from Kilburn Hall and had been missing from Kilburn Hall since November 14, 1990. As I have noted elsewhere, Mr. Stonechild was unlawfully at large from a community home.

He subsequently received a call from Jerry Mason (Neil Stonechild's uncle) asking about the cause of death. He advised Mr. Mason that it was due to exposure.

Dr. Fern's notes[291] also contain reference to a telephone conversation with Keith Jarvis on December 6, 1990. Counsel asked Dr. Fern to read the note:

> "A. I'll do my best. "Definitely seen alive 9:30 Saturday 24 November. Had been to party. Drank about 26 ounce." This is purely what I've been told. "Tried to get into an apartment shortly after midnight, Snowberry Downs." I think that's what that says. "All confirmed by friends who were with him. Body was well frozen. Temperature was very cold Probably died Sunday 25 November."[292]

A series of documents were identified through Dr. Fern, including the Declaration of Coroner[293], Notification of Death[294] and Registration of Death Form, all signed by him on December 3, 1990.[295] Dr. Fern also identified a copy of the Autopsy Report that he received on February 1, 1991.[296]

In the Declaration of Coroner[297], he gave the cause of death as exposure, though he noted that the police were still investigating the matter. Under the category of mode of death, Dr. Fern wrote "natural". Then crossed that out and wrote "accidental". In the Registration of Death Form[298], he recorded that the death was due to "exposure to extreme cold" and "possibly inebriated". In column 30 of the Registration of Death Form, entitled "Accident or Violence", Dr. Fern recorded "Accidental exposure to extreme cold".

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[291] Notes of Dr. Fern, Inquiry exhibit P-45

[292] Evidence of Dr. Fern, Inquiry transcript, vol. 10 (September 23, 2003): 1725

[293] Declaration of Coroner dated December 3, 1990, Inquiry exhibit P-46, reproduced in this Report as Appendix "M"

[294] Notification of Death dated December 3, 1990, Inquiry exhibit P-48

[295] Registration of Death Certificate dated December 3, 1990, Inquiry exhibit P-47

[296] Autopsy Report dated January 30, 1991, Inquiry exhibit P-49

[297] Declaration of Coroner dated December 3, 1990, Inquiry exhibit P-46, reproduced in this Report as Appendix "M"

[298] Registration of Death Certificate dated December 3, 1990, Inquiry exhibit P-47

Dr. Fern was also asked about the certain notations that appeared in the handwritten draft Registration of Death Form which he prepared on the same date as the official Registration of Death Form.[299] In particular, he was questioned about his entry in "Accident or Violence" column (30) of the draft Form. While in the official Form he recorded "Accidental exposure to extreme cold", in the draft Certificate he recorded "undetermined". Dr. Fern testified that despite this discrepancy, he remained of the view that it was undetermined whether the death was due to accident or violence. He speculated that the official Registration of Death Form was likely brought to him by the funeral home personnel who required a Death Certificate before they could bury the body. Dr. Fern suggested that in filling out the official Form, he may not have had the file in front of him when he filled out the official Form and supplied it to the funeral home. He maintained that if he had put his mind to it, he would have recorded "undetermined" in the official Registration of Death Form. This somewhat ambivalent answer was not further explained.

Dr. Fern received the Regina Crime Lab Toxicology Report[300] from the Saskatoon City Police in April 1991. There was no explanation offered by Dr. Fern or anyone else as to why the report was sent first to the police and not to him as was the usual practice. When pressed for a possible explanation, he suggested that the police got the report first because it was of "interest" to them for some reason.

> "Q. Dr. Fern, do you, other than the notes that we've reviewed, do you have recollection of any contact with members of the Saskatoon Police Service, and particularly anybody that might have been investigating the death of Neil Stonechild?"
>
> A. Other than as recorded, no, I don't, although obviously I received the toxicology reports. I actually got them from the Saskatoon City Police, which is a bit unusual. They usually come straight to me, but on the other hand on this occasion they came to the City Police first. And presumably I took it from that that the City Police got the first copy and – for one thing and for another thing that presumably it was a case of interest to them for some other reasons."[301]

That answer was never explained nor was the delay in forwarding the report to him. He observed from reading the report that there were no common drugs found but there was an alcohol reading at 150 milligrams in 100 millilitres of blood.

Fern was questioned about statements attributed to him in a December 3, 1990 StarPhoenix Article.[302] He was asked about the statement that "the weekend exposure was the probable cause of death" and "we have excluded obvious foul play as he did not have an injury of any kind":

> "A. Oh, I'm sorry, there are two episodes here. My apologies. One is in relation to a case I wasn't involved with. It says here, "... said on the weekend exposure was the probable cause of death." That would be correct. "We have excluded obvious foul play as he didn't have an injury of any kind." I am not

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[299] Handwritten Draft Registration of Death Certificate, Inquiry exhibit P-48

[300] Toxicology Report, Inquiry exhibit P-50

[301] Evidence of Dr. Fern, Inquiry transcript, vol. 10 (September 23, 2003): 1743

[302] StarPhoenix Article of December 3, 1990, Inquiry exhibit P-51

> sure that I would say that, but either way, that's what's written. "However, there will be further police investigations. We still don't know how he got to be there and under what circumstances." With that I would agree. He did have some injuries, but they certainly weren't injuries which would have themselves contributed to his death. Injuries of the kind described on the face are certainly not fatal under ordinary circumstances."[303]

Notwithstanding these observations he took no further action either before or after he received the toxicology report.

The Coroner was also asked about an interview with the CBC in June of 2003. In particular, he was referred to the comments he made to a reporter that Stonechild's injuries were consistent with being beaten and dragged. He confirmed that there was such a conversation. While the terms "beaten" and "dragged" were words suggested by the reporter, Dr. Fern acknowledged that he told the reporter that the injuries could be consistent with such a scenario depending upon how one defines the term "beaten". It is difficult to reconcile these statements with what was in his reports.

Dr. Fern painted a somewhat discouraging picture of the operation of the Coroner system in Saskatchewan. He confirmed that he has never attended a formal meeting of coroners since he began his work in 1967. He has attended some upgrading sessions called by the Chief Coroner from time to time but described them as infrequent. I was prompted to ask:

> "THE COMMISSIONER: Doctor, are you telling me that there were no – you said there were no guidelines, but you mean there was no information emanating from the Chief Coroner's office to coroners in the field indicating what sort of protocol or process that should be followed?
>
> A. Well, Your Honour, the – going back a way, the coroners had huge power when they were started back in the 1200s and as time has gone on, most of those powers have become belonging to other parties and the coroner's role, as far as I've described them now – when I came here, the – let's go back to 1962. In 1962 a fair number of the physicians who were coroners at the time, for various political reasons of the day and I was not here at that time, but I mean there was all of a sudden a shortage of physicians and a shortage of coroners, and I understand a lot of coroners got appointed, and they were lay coroners at that time, a variety of people who otherwise had no particular knowledge of the medical type of factors involved in death. And to this day the majority of the coroners are now lay coroners, which is an interesting point. Over time it was probably reasonable to expect a physician to know most of the things that would be involved in the assessment of death. That's not necessarily the case for lay coroners, of course, it's a harder position for them to take. Having said that, therefore, over time we now find that the Chief Coroner today does, in fact, send out information sheets fairly frequently, at least once a year or twice a year. We don't have meetings. There are no formal structured meetings of any kind. There is no formal training. I have to tell you that, but I mean I've been at it a long time. I'm no novice at this.

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[303] Evidence of Dr. Fern, Inquiry transcript, vol. 10 (September 23, 2003): 1747

THE COMMISSIONER: Well, I'm not doubting that, but – so you mean there isn't any sort of assessment or analysis provided by the Chief Coroner with respect to the work that the coroners in the field or any interchange or interplay of information between coroners and the Chief Coroner as to whether a particular Coroner is performing his or her task adequately?

A. Well, to be honest, I don't know how the Chief Coroner handles it now. You'd have to talk to the Chief Coroner. I don't know whether he's giving evidence or not. Certainly this Chief Coroner communicates a lot more than was previously the case. The first Chief Coroner, Dr. McMillan, I knew on personal terms, so we would phone each other and that was the way things were done in those days. With Dr. Stevenson there was a lot less communication. With Dr. Nyssen, the current Chief Coroner, there's a fair amount of written communication and I know him personally. So I mean if there's an issue I phone him up. I don't phone him very often, but I'm free to do so.

THE COMMISSIONER: But how would the Chief Coroner know whether a particular coroner was discharging her or his responsibilities adequately?

A. Well, frankly, I don't know, Your Honour, but I assume that the Chief Coroner reads all our reports and the assessments, the documents that come to the Coroner's Branch. We have to send everything in to them so he has access to that. And I know now and again he'll write me a letter and say on a given case that he wants me to review whatever the issue would be and I will do so. So I mean it is considerably better in that regard than it used to be."[804]

He conceded that he was obliged as Coroner in 1990 to follow-up any suspicions he had with respect to a death. It follows that he could not simply depend on the police to carry out any inquiries they thought appropriate into a suspicious death. In the case of Mr. Stonechild, he did not carry out any such follow-up nor did he do any follow-up after receiving the Toxicology Report. He explained this by saying he did not think there was anything unusual about this case. When asked again about a 17-year-old being found dead who was not suffering from any kind of illness, not near his home or a residence, found in an unusual location and not near any bar or restaurant, he agreed there was no obvious explanation for Neil Stonechild being found where he was. He agreed, additionally, that the discovery that a right shoe was missing was an unusual circumstance and confirmed that he did not take time to observe the worn sock or the hole in the sock, factors which would obviously suggest that the deceased had been walking for some time.

In the course of his comments to the newspaper reporter with the Saskatoon StarPhoenix, he sought to place responsibility on the Saskatoon Police Service for finding out what had happened to the deceased. With respect, he shared that responsibility and it was not discharged appropriately.

In later cross-examination, he agreed that Mr. Stonechild had injuries that were apparent to the naked eye and that too should have required him to make a further investigation. When asked for an explanation, he had none. He was also asked about whether he examined the clothing of the deceased for blood or other bodily fluids, and he confirmed that he did not. Such an examination might well have provided additional information as to what happened to the deceased and why he was located where he was.

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[804] Evidence of Dr. Fern, Inquiry transcript, vol. 10 (September 23, 2003): 1761-1764

When asked questions about the cause of the facial lacerations, and whether they might have resulted from falling into "sharp snow" (this was alternative explanations offered by counsel to explain the cause of the injuries as opposed to a blow), he agreed that that could have been a cause, but that he did not think that was so. He also stated that the injuries occurred before the deceased fell into the snow. These were significant observations in light of the other suggestions made during the course of the Inquiry.

He was asked about the marks on the wrists. He concluded that they were caused by a garment and that with a harder object such as handcuffs you would expect grazing or scraping. I would note at this juncture, that these observations do not accord with the later forensic evidence, which I consider to be more reliable.

When the Coroner was asked if he was satisfied with the police investigation, he gave a somewhat equivocal answer, "Well, I was not dissatisfied."

One of the most helpful portions of Dr. Fern's evidence related to what future action might be taken by the Province with respect to the investigation of cases such as this. He suggested that special teams should be organized to investigate homicides, suicides and traumatic deaths. It is worth repeating the full text of his answer:

> "A. There isn't – what we're looking at here is how should potential homicides, or suicides, or traumatic deaths be investigated, and quite frankly, if you want my opinion, I'll give it, we ought to have special teams that do this kind of a thing. There are only a small number of people who are trained to do this kind of work."[305]

Dr. Jack Adolph[306]

Dr. Adolph was the pathologist who performed the autopsy on Stonechild's body. He described his training in Saskatoon and Winnipeg leading to a fellowship in pathology in 1962. He carried on general practice until he moved to St. Paul's Hospital in 1975. He continued as a Pathologist until he retired in 1997 and has since then done some contract work. He is recognized as a specialist in pathology.

He confirmed that a central part of his work is to determine cause of death, and he provided evidence about the process followed in examining a frozen body.

Adolph confirmed that the clothing he removed from the deceased's body was given to Sergeant Morton, the Identification Officer. He was asked if he would look for blood on the clothing and he said, "not specifically".[307] There were various suggestions during the Inquiry that spots and marks that appeared in the vicinity of the body might have been blood stains, but in light of the fact that the pathologist did not make any investigation of the clothing, nor did the police, we cannot know if the examination of the clothing might have produced important information. In any event, he saw the police as having responsibility for such an examination.

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[305] Evidence of Dr. Fern, Inquiry transcript, vol. 10 (September 23, 2003): 1819

[306] Evidence of Dr. Jack Adolph, Inquiry transcript, vol. 11 (September 24, 2003): 1954-2053

[307] Evidence of Dr. Jack Adolph, Inquiry transcript, vol. 11 (September 24, 2003): 1959

As indicated in his Autopsy Report[308], Dr. Adolph established the cause of death was exposure to cold and explained he reached the conclusion by what he called, "exclusion":

> "Q. Now can you describe what your primary function is or primary role is in performing an autopsy in a situation such as this?
>
> A. To establish a cause of death.
>
> Q. And were you able to establish a cause of death on this autopsy?
>
> A. Yes, I thought that death was due to exposure to cold.
>
> Q. And on what did you base that conclusion?
>
> A. That conclusion, to me, has always come by exclusion. There are no specific findings in death that's due to exposure to cold and so the approach is to rule out any other cause of death."[309]

He testified that given the temperature on the night in question, a person exposed to the cold would have died within two or three hours. He noted that there are many factors that could extend or curtail length of time before an individual succumbs to the cold.

Adolph was asked about an entry which he made in his Autopsy Report indicating time of death was 2200 hours, November 27, 1990. He could not recall how he arrived at that time of death, and noted that the Pathologist's estimated time of death is typically not reliable. He testified that it was quite possible that Stonechild had been dead since November 25, 1990.

In his Autopsy Report, Dr. Adolph noted two parallel abrasions across the midpoint of the deceased's nose directed obliquely down to the right; abrasions he described as superficial. He explained the difference between an abrasion and a laceration. An abrasion, he explained, results from the loss of the superficial layer of skin, whereas a laceration goes much deeper into the skin. In cross-examination he testified that it would not be unusual to have abrasions on a person's body in cases of death in extreme cold. Such abrasions could come from falling, stumbling or bumping against something. He also observed that the injuries were recent. He suggested that they may have occurred within an hour of death, but he agreed with Counsel that it is impossible to accurately date such injuries.

Dr. Adolph confirmed that the abrasions he observed were caused by something with an edge, but a rough edge not a sharp one, and agreed that the object may have struck Mr. Stonechild's face when he had a fall. He took particular pains to point out that Keith Jarvis's report that there were no signs of trauma on the deceased's body was not correct. He stated that what he told Sgt. Jarvis was that there was no evidence of traumatic death, quite a different matter.

Dr. Adolph also noted in his Autopsy Report that he had found a small stone in Stonechild's left shoe, something he would not have expected to see given the discovery of the body in an open area.

Dr. Adolph was questioned about the level of alcohol in the deceased's blood. He stated that it might have been a contributing factor to Mr. Stonechild's situation, but he also noted that such an alcohol level is "generally not associated with marked incapacity or coma". This is an important observation as there were many suggestions during the inquiry that Neil Stonechild was very inebriated on the night of November 24/25. The Doctor noted that the level of alcohol in Stonechild's body may have increased after his death as a result of decomposition. He noted, however, that the difference between the alcohol levels at the time of death, and the time the blood sample was taken, should not be significant.

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[308] Autopsy Report dated January 30, 1991, Inquiry exhibit P-49, reproduced in this Report as Appendix "N"

[309] Evidence of Dr. Adolph, Inquiry transcript, vol. 11 (September 24, 2003): 1962-1963

Dr. Graeme Dowling[310]

Graeme Dowling is the Chief Medical Examiner for the Province of Alberta. He was recruited by the RCMP to conduct a second autopsy of Neil Stonechild's body in the year 2000. Dr. Dowling received his medical training in Manitoba and was certified in anatomical pathology by the Royal College of Physicians and Surgeons in 1985 and certified in anatomical and forensic pathology by the American Board of Pathologists in 1986. He also served as a clinical professor at the University of Alberta.

He explained that "pathology" is:

> "A. ...in its simplest terms, is the study of disease, what makes people ill, why do they react the way they do to illness, why do people die? In its broadest terms, that's what pathology is,..."[311]

He gave a useful description of the role of pathologists in Canada:

> "A. ...An anatomic pathologist generally works, or most commonly works in a hospital setting and it's their role when a person has say a tumour removed during the surgery, or any type of surgery where tissue is removed or a biopsy taken. An anatomic pathologist is the person who would look at that tissue both with the naked eye and under a microscope, and say what type of growth that is, and most importantly whether the growth is benign and probably won't be a future problem to the person, or whether it's cancer. That is the type of pathology that I pursued, but then I went further, and I sub-specialized in a branch of pathology that we refer to as forensic pathology which is, in a sense, the bringing together of medicine with the law.
>
> As a forensic pathologist it is my role to assist the law in a courtroom setting with understanding medical information. But more importantly, what forensic pathology is, it's the investigation of unexplained natural deaths and all violent deaths. So that an important part of the practice of forensic pathology is the ability to interpret injury...."[312]

He subsequently obtained a fellowship in forensic pathology in Dallas, Texas. Forensic pathology is recognized as a sub-specialty in the United States, but not in Canada.

He was asked to comment on the coroner's system in Saskatchewan and to contrast it with that in Alberta and those provinces that use a Medical Examiner. His commentary deserves repetition:

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[310] Evidence of Dr. Graeme Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1153-1289

[311] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1156

[312] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1157-1158

> "A. ...The medical examiner system is a system that separates what I'll call the investigative side of death investigation from what I'll refer to as the inquisitional side of death investigation. And as I contrast it with the coroner system, the meaning of that will become clearer. In the medical examiner system a physician is responsible for overseeing the investigation of a death, and in Alberta the Act that we work under is *The Fatality Inquiries Act* passed in 1977. There are 100 – approximately 180 part-time, fee-for-service medical examiners throughout the Province of Alberta. The vast majority of these individuals are family practitioners or family physicians. So when a death occurs in their community that is reportable as defined in *The Fatality Inquiries Act* then they are charged with overseeing the investigation. Now, it's very important for Mr. Commissioner to understand that these individuals are not pathologists. They are family practitioners, some internists, but they are not pathologists. And they have a choice to make when they are investigating a death. They can review the history of the person, the scene findings, and then decide whether or not they need an autopsy to establish the cause and manner of death, or whether all they really need is what we call an external examination of the body. If they need an autopsy then they have the power or they will ask a pathologist to conduct the autopsy for them. And in most areas of Alberta the pathologists who are responsible for those autopsies are myself and three other full-time forensic pathologists who are employed in the capacity of the medical examiner's office. So we have two full-time forensic pathologist medical examiners in Edmonton of which I am, of course, one of those individuals; and we have two in Calgary. Now, of course, in the cities Edmonton and Calgary, we, the full-time people, are responsible for all of the cases or the vast majority of cases in those large centres. So I, as a medical examiner, will decide whether I need an external exam of the body or an autopsy. If I need an autopsy, I do it. In the rural area, the physician determines – the medical examiner determines whether or not they need simply an external exam or an autopsy."[313]

He was asked to describe how a death investigation is conducted. He explained that:

> "Death investigation is – constitutes three corners of a triangle, where we look at the history, the medical, psychiatric, social history of an individual. We look at the scene, what is the scene telling us about how this individual died?"[314]

He noted the five questions that a forensic pathologist report must attempt to answer: who died, where did they die, when did they die, why did they die, and how did they die.

He was asked if a Pathologist can determine the time of death and he made this observation:

> "A. ... time of death is sometime between the time the person was last seen alive and when they're found dead; that's the best we can do. In spite of anything you've read or seen on TV, that's the best we can do. The cause of death, and what we call the manner of death, which is a statistical break down of deaths into five – in most jurisdictions five categories. Natural,

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[313] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1161-1162

[314] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1163

> where the death is due to a natural disease; homicide, where death is at the hands of another, but that is not a legal term, it's a statistical term; suicide, which is the intentional death of an individual at their own hands; accidental, the unintentional death of an individual either at their own hands or at the hands of another; and undetermined, where after a complete investigation we're not sure what category the death properly belongs to."[315]

He then outlined how death investigation works in the Province of Alberta:

> "A. …Now, in Alberta we have a board of three people, it's called the Fatality Review Board. It is constituted by a lawyer, a physician, and a layperson who will review some, certainly not all, but some of the files that are generated by the medical examiner's office and will – and recommend to the Minister of Justice which ones should go to what I will now call the inquisitional phase of death investigation. In Saskatchewan this would be referred to as the coroner's inquest."[316]

He observed in passing that coroners in Saskatchewan do not have to be physicians.

Dr. Dowling was asked how a pathologist arrives at the conclusion that a fatality was caused by hypothermia:

> "Q. Can you please explain how a pathologist would arrive at a determination of death due to hypothermia?
>
> A. Yes. Hypothermia or what I prefer to call cold exposure, Mr. Commissioner, is what we generally refer to as a diagnosis of exclusion, and it's one of those deaths that emphasizes the absolute importance of using that triangle of investigative findings, because at autopsy there's really not much to see. You can do the best autopsy in the world and really there's not much to see at the autopsy of an individual who's died of cold exposure. It's not like a gunshot wound where it's fairly obvious even to the untrained eye that there's a problem here, that there's a hole where there shouldn't be a hole. In cold exposure there is essentially nothing of great significance at autopsy. The most that one will generally see on examination of the body is some minor scrapes of the skin usually caused as the individual, as they get close to their time of death, is disoriented, often falling to the ground, and quite often the settling of the blood, what we call the lividity, will be a reddish-pink in colour as opposed to the usual kind of purplish colour that we see, but even not that is an absolute."[317]

He was also asked how long it would take for a person to succumb to hypothermia and he said this:

> "A. …there are so many variables. What is the actual temperature? Is that temperature steady throughout? Is there a wind? What is the body size? Is

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[315] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1164

[316] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1164-1165

[317] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1170-1171

> this person a thin individual? Are they overweight? Are they obese? Are they properly clothed? Is their clothing wet?"[318]

He followed with this comment:

> "A. Regrettably, alcohol consumption is one of the most significant contributory factors that we see in most cold exposure deaths."[319]

and:

> "A. …One of the things that alcohol does is it – it makes the skin flush, and by that I mean you tend to become a little bit red in colour as you drink alcohol, and that's simply because there's increased blood flow to the skin area. With that increased blood flow, of course, there is increased loss of body heat, and, of course, it's the loss of body heat that's the primary factor in so-called cold exposure or hypothermia deaths. So alcohol would seem to be a factor that way.
>
> But I have – it's been years since I've read this literature or seen this presentation – I am aware that there is some body of evidence that suggests that alcohol may not be that significant with respect to loss of body heat. What I find alcohol's role to be, just in the cases that I've seen, is that it makes the individual more likely to do something that normally, if they were using their head, they wouldn't, and that is going out in minus 40, minus 30, minus 20 in their spring jacket. That's where the real role of alcohol seems to come into play.
>
> Q. Dr. Dowling, are you familiar with, I'm not sure what to call it, but that on occasion a person that has succumbed to cold exposure has disrobed to some degree?
>
> …
>
> A. Yes. Mr. Commissioner, that's something that we refer to as paradoxical undressing. It is not uncommon for, at the scene of a cold exposure death to see the clothing partially removed or, on occasion, completely removed and scattered usually in a zigzagging pathway in the snow near the body."[320]

He made the following further observation:

> "A. … It is thought, I don't know if it's proven, but it is thought that close to the time of the person's collapse into unconsciousness that they feel a sense of warmth to the point that they feel hot, and therefore start to remove their clothing. Now in reality they aren't hot. Their core body temperature is getting – is obviously at the point where they're about to lose consciousness and, if not found, will die, yet their sensation is of warmth, and that is why they will start to remove their clothing."[321]

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[318] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1174-1175

[319] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1176

[320] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1177-1178

[321] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1178-1179

and:

> "Q. …does the absence of removal of clothing have any indication or any impact on diagnosis of death by cold exposure?
>
> A. No, it wouldn't."[322]

In April of 2001, the body of Neil Stonechild was exhumed by the RCMP and Dr. Dowling performed the second autopsy. He produced an extensive Autopsy Report.[323] As a result of the passage of time, the information that Dr. Dowling was able to gather from the autopsy was limited. I refer particularly to the conclusions:

> "CONCLUSIONS
>
> This 17-year-old male was found dead, frozen in sub-zero temperatures, in an industrial area in the north end of Saskatoon on the afternoon of November 29, 1990. He was apparently last seen alive, by witnesses, during the late evening or early morning hours of November 24/25, 1990, in a police vehicle at an intersection in west Saskatoon.
>
> Documentation of his whereabouts after this point in time was apparently lacking. It is alleged that witnesses saw blood on the face of the decedent when he was last seen alive.
>
> A Coroner's autopsy was conducted on November 30, 1990. Two parallel linear scrapes (i.e. abrasions) were noted on the nose of the decedent, and additional small abrasions were found on the left cheek of his face, on his chest, and on his knees. No other injuries or natural disease processes were identified at the initial autopsy to account for death. Postmortem toxicology revealed the presence of a blood alcohol concentration of 150 mg/100 ml (as compared to the legally defined intoxicating level of alcohol, for the purpose of operating a motor vehicle, of 80 mg/100 ml), with no other intoxicating drugs identified. The cause of death was attributed to hypothermia (i.e. cold exposure).
>
> A further investigation into the circumstances surrounding this individual's death was commenced by the RCMP in Saskatchewan in the year 2000. Review of photographs, taken during the course of the initial autopsy, revealed that the parallel linear abrasions noted on the nose could have been produced by a pair of handcuffs, and also noted the presence of a skin impression on the back of the right wrist, which could have been produced by handcuffs. In light of this, and other concerns raised by the investigation, an exhumation of the body was ordered by the Chief Coroner of the province of Saskatchewan. Re-examination of the body was performed at the Office of the Chief Medical Examiner in Edmonton on April 24, 2001.
>
> The exhumed body exhibited an advanced degree of postmortem skin darkening and drying (i.e. desiccation), together with post mortem loss of skin and soft tissues primarily over the thighs of both legs. The abrasions identified at the initial

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[322] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1179

[323] Autopsy Report of Dr. Dowling, dated July 3, 2001, Inquiry exhibit P-31, reproduced in this Report as Appendix "Q"

> autopsy could not be seen at the exhumation examination, as a result of these postmortem changes. No injuries were identified that had not been described at the initial autopsy examination. In particular, there was no visible evidence of any fracture of the cartilage or bone of the nose. Complete body x-rays failed to reveal the presence of any other bony fractures. No natural disease processes were identified upon re-examination of the relatively well preserved organs, contained within a bag with some embalming fluid in the trunk cavity, to account for death. Likewise, re-examination of the histology slides from the original autopsy failed to disclose any injury or natural disease process to account for death.
>
> Although the scope of this examination was limited by the degree of postmortem change as outlined above, there was no evidence of any injury or other natural disease process to refute the original autopsy findings and conclusions."[324]

As a result of the advanced post-mortem desiccation of skin and tissue, the second autopsy did not assist in answering many questions about the injury to the nose and the marks on the wrist of Stonechild, except that there were no related bone fractures. Dr. Dowling, however, did provide the RCMP with his views on these injuries based upon his review of the photographs from the scene[325] and the autopsy photographs.[326] The RCMP initially put 5 questions to Dr. Dowling regarding the apparent injuries present on Mr. Stonechild. The questions were as follows:

"1. Are they more likely to be the result of an assault or from falling during his apparently disoriented state due to the effects of hypothermia?

2. Are the wounds on the nose more consistent with a blow or an incised wound.

3. Are the marks on the face more consistent with a blow or a cutting force?

4. Can you offer any suggestion as to the origin of the mark on Stonechild's right wrist shown in Photo 42?

5. Is the blackening of the lips due to injury or to freezing?"[327]

Upon reviewing the photographs and the original autopsy report, Dr. Dowling provided the RCMP with a written report.[328] He was questioned extensively about the views he expressed in this report.

He confirmed that the injuries to the face were superficial and were caused by some form of blunt trauma as opposed to a sharp injury. He defined a blunt object as anything that is not sharp such as the edge of a piece of paper, a piece of broken glass or the sharp edge of a razor blade. He added to that the comment that as a Forensic Pathologist he could not tell whether a blunt injury was caused by a blow as opposed to a fall, but that the injuries in any event were minor.

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[324] Autopsy Report of Dr. Graeme Dowling, Inquiry exhibit P-31, July 3, 2001: 7-8

[325] Stonechild Death Scene Photographs, Inquiry exhibit P-29

[326] Stonechild Post-Mortem Photographs, Inquiry exhibit P-28

[327] RCMP letter to Dr. Dowling dated March 27, 2000, Inquiry exhibit P-25

[328] Dowling letter to RCMP dated April 14, 2000, Inquiry exhibit P-30

In his report, Dr. Dowling offered that the scene photographs[329] appear to show hard crusty snow, and that Stonechild's facial injuries could have been caused by falling on frozen snow. He conceded that he did not know what snow conditions were like where Mr. Stonechild was found. In the final analysis he said:

> "A. …I cannot rule out that these were assaultive injuries,"[330]

And then this question and answer:

> "Q. Bearing in mind the comments you've made about the use of the word "consistent" by a pathologist, in your opinion are the injuries also consistent with being inflicted by another person with a blunt object?
>
> A. They could very well be, yes."[331]

He was then asked about whether the facial injuries might have been caused by someone striking Neil Stonechild with handcuffs, and I refer to the following questions and answers:

> "Q. Okay. If this were caused by someone striking him with handcuffs, you would expect to see bruising and other injuries associated with the particular scratches?
>
> A. Usually there would be bruising, but it is not always present.
>
> Q. Okay. But, again, it would be highly unlikely that – or unlikely, let's put it that way, that minor injuries like that could be caused by a strike from something like a hard object like a handcuff?
>
> A. I would not go that far. I think it is possible.
>
> Q. But not likely?
>
> A. I can't characterize it."[332]

A number of questions were put to Dr. Dowling as to whether the marks on the deceased's face would require the application of substantial pressure. Counsel for the Saskatoon City Police Association introduced as an exhibit, and placed before Dr. Dowling, a post-mortem picture of Stonechild's face with a pair of handcuffs superimposed.[333] I quote the following exchange between Counsel and Dr. Dowling:

> "Q. The only way we could make a substantial impression such as we saw in photo number 41 is if this had pressed a good distance into the person's face?
>
> A. Well, I think the one thing Mr. Commissioner has to consider is that the nose is flexible.
>
> Q. M'hm.

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[329] Stonechild Death Scene Photographs, Inquiry exhibit P-29. Dowling referred particularly to photograph number 32

[330] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1213

[331] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1213

[332] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1237-1238

[333] Post-Mortem Photograph of Stonechild face with handcuff superimposed, Inquiry exhibit P-33

A. So even though that surface is rounded there could be enough give or flexibility in the nose that more of it would be exposed to the edges than you might initially think.

Q. Okay, but if we look at it just the way it is we'd expect an exposure, perhaps a quarter of an inch or something like that? Just with a direct contact?

A. At initial contact. It could extend longer as the nose flattens if force is applied.

Q. Okay. But the injuries to Mr. Stonechild's nose is considerably longer than just a minor portion, is that right?

A. There is no ruler in place there, but if I was to guesstimate, the lower injury appears like it could be close to 5/8 to 3/4 of an inch, and the upper one closer to a 1/2 inch.

Q. Okay. Would that take a considerable force to drive a pair of handcuffs into a person's face and cause that length of an injury?

A. Given that it's metal I'm not sure how much force it would take.

Q. Would one expect, though, to see the cartilage damaged underneath?

A. Again –

THE COMMISSIONER: Have you had very much experience with the impact of handcuffs?

A. Of handcuffs, no, Mr. Commissioner, no.

Q. Well, Mr. Commissioner, I think this gentleman is by far better qualified than the gentleman who produced that picture.

THE COMMISSIONER: I don't know anything about that.

Q. Okay. Now looking at the cuffs themselves, I think the way they were put in that picture is they are open and, if I'm correct, it looks like they're placed with the open portion towards the face, is that correct?

A. You may be right, but I – whether it's my glasses or what, I'm not absolutely certain.

Q. Now if that's the case, that causes a major problem, of course, because you can't touch the nose with the handcuffs open that way.

A. In the way that you're suggesting and showing me with your right hand, no, you would – I would expect to see, in addition to the nose injury, injuries produced by the –

Q. From either side.

A. – either side of the semi-circle that the cuffs form.

Q. Okay. The fact that – I wonder if we could go back to photo 41, please? Looking at the top of the upper injury, does it not seem also if something like a handcuff is causing that, it should also be causing some injury to the cheek?

A. You wouldn't necessarily see that, given the curvature of the handcuffs that you've showed me.

Q. Okay. Is it possible, likely or hard to say?

A. It's hard to say.

Q. Okay. The fact that one of the lines is longer than the other, is that not – or considerably longer than the other, I think, towards twice as long, is that not inconsistent with something like a punch or something similar, like with a handcuff or striking someone with a cuff?

A. No, it isn't. The whole difficulty of human skin and so-called pattern injury is that the patterns never show up exactly as you might expect them. There's a variability there that can only be accounted for by the – I'll call it the elasticity of human tissue. The patterns are never perfect, so it – I wouldn't put a great deal of stalk on the difference in lengths of those injuries personally.

Q. Okay. Now looking at it generally, would it be fair to say the handcuff theory, if one wants to call it that, although possible, is really quite speculative?

A. I think all I can say is that we may have a patterned injury. It's possible that it's grass, it's possible that it's crusted snow, it's possible that it's a handcuff. And as a forensic pathologist it would be improper for me to say it is or it isn't this or that."[334]

Counsel for the Stonechild family also questioned Dr. Dowling about the possibility that handcuffs could have caused the injury to the nose. I refer to the following passage of the evidence:

"Q. ...I believe the maneuver he used was using the handcuffs as knuckle dusters? You're familiar with that term?

A. I'm familiar with the concept, yes.

Q. And that's one possible explanation for those injuries, I believe you agreed?

A. Yes.

Q. Might it also be equally explainable that if an individual was handcuffed in that fashion, to create the – what I'm going to suggest to you are ligature marks that are depicted in the other photographs, that in some kind of defensive maneuver might raise their hands and either as a defensive movement have the handcuffs pushed into his face?

A. If the handcuffs contacted the skin with enough force, then that is a possible explanation."[335]

Dr. Dowling was also asked about the marks on the deceased's right wrist apparent from the post-mortem photographs. I quote:

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[334] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1239-1243

[335] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1254

> "Q. Okay. And if that had been caused by handcuffs, would you expect there would be different types of marks than what we see there?
>
> A. Not necessarily. I have seen – there are not that many cases that I seen that involve the use of handcuffs, in fact they're quite rare, but I have seen, apart from handcuffs, ligatures, ropes, et cetera, that will leave that type of skin impression without actually injuring the skin itself."[336]

He went on to state that, though it would be unusual in his experience, it was possible that the impression of the wrist of Stonechild could have been made by a handcuff.

Dr. Dowling prudently maintained the position throughout his testimony that it was not possible for a Forensic Pathologist to determine based upon the photographs what object or objects caused the marks and injuries suffered by Stonechild. The furthest he was prepared to venture was to offer his opinion as to the possible causes of the injuries. Based upon his examination of the photographs, the possibilities included crusty snow, twigs, and handcuffs. He did, however, acknowledge that his opinion of what might have caused the injuries would also be influenced by factors other than an examination of the photographed injuries:

> "Q. And so if I put to you as a hypothetical that this person who we're seeing in the photographs right now on the screen was last seen in police custody before he was found dead, would that be an important fact for you?
>
> A. It's – it's an important observation, yes.
>
> Q. Okay. And would it be helpful in this context to the questions I've been asking you if you knew that as part of a hypothetical basis?
>
> A. It's only important insofar as understanding the circumstances surrounding the death.
>
> Q. And then when you add to the hypothetical that we've got what could be consistent with handcuff markings on that person's hands, as well as the apparent cuff marks over his face, that may add to your information base as well, in terms of coming to probabilities?
>
> A. Yes."[337]

Dr. Emma Lew[338]

Dr. Emma Lew is a Forensic Pathologist attached to the Medical Examiner's office of Dade County, Miami, Florida, and has held that position since 1992. She was born in Saskatoon and attended the University of Saskatchewan and served her internship at St. Paul's Hospital. She completed her residency in anatomical pathology at the University of British Columbia and at the University of Saskatchewan and obtained a forensic pathology fellowship from the Dade County Medical Examiner's office from 1991 to 1992. She is also an Assistant Clinical Professor of Pathology at the University of Miami School of Medicine. She has published a number of articles and lectured.

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[336] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1233

[337] Evidence of Dr. Dowling, Inquiry transcript, vol. 7 (September 17, 2003): 1285

[338] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8120-8331

Commission Counsel had not intended to call Dr. Lew but was strongly urged to do so by Counsel for the Saskatoon Police Service and others. As a result she appeared before the Inquiry at its conclusion.

Commission Counsel posed the following questions to her:

> "MR. HESJE: Mr. Commissioner, again, I've taken somewhat of a short view – or recitation of the qualifications of Dr. Lew. I propose to ask her opinion based on a review of certain photographs on the following: (a) the most likely cause of injuries to Neil Stonechild's nose and cause of the imprints to the right wrist; and, secondly, the timing of such injuries and imprints in relation to death. If there are questions with respect to her qualifications or opinions."[339]

She was cross-examined by Mr. Halyk as to her qualifications with respect to the origin of certain injuries. I refer to the following exchange between Counsel and Dr. Lew:

> "Q. ...I don't see anything in the materials that have been provided that you are an expert in connecting certain injuries to a certain – caused by a certain object or objects. Have you published anything in that area?
>
> A. Although I may not have published articles –
>
> Q. No, just the first question –
>
> A. – on the topic –
>
> Q. – have you published anything in that area?
>
> A. I don't remember that I have.
>
> Q. No. Okay. So – and having not published articles in that area, can you tell us if you have done specific studies with respect to that issue?
>
> A. I have not done specific studies.
>
> Q. Have you conducted any specific experiments in that regard in respect to that issue?
>
> A. I have not conducted experiments.
>
> ...
>
> Q. And, in fact, you made some comment at the end of something that I saw about – that pseudoscience, that sometimes an observation is better, or something to that effect? Do you remember what I'm referring to?
>
> A. I know what you're referring to."
>
> ...
>
> "A. With specific reference to your question, what I said was, "Physical evidence and common sense prevail over pseudoscience."
>
> ...

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[339] Evidence of Dr. Emma Lew, Inquiry transript, vol. 42 (March 17, 2004): 8122

Q. And the best – the best you can do for us in trying to assist us, and this is not a criticism, is to take a look and take your best guess as to what may have caused the injuries that we see on the body of Neil Stonechild?

A. Yes, based on photographs.

Q. Yeah, and what you – what you plan to do is give us your best guess.

A. My best educated guess.

A. I was going to say that although I may not have conducted experiments or published on those specifics, I do have over 13 years of experience looking at real dead bodies with those very injuries.

Q. Okay. And can you elaborate on that, what sort of injuries, what sort of causes of death are we talking about?

A. I have examined bodies with all sorts of injuries and all sorts of mechanisms of death, but I suppose in this particular context it would be abrasions as were seen on the nose of Neil Stonechild.

...

Q. When it comes to your duties as a pathologist, perhaps in your capacity as – with Miami-Dade County, can you tell us basically what your duties are in that position?

A. My duties include the investigation of death, which, in turn, includes the attendance at scenes of violent and suspicious deaths, the performance of autopsies, testimony in court and in depositions, and in teaching various groups of people from law students and medical students and paramedics to actually doctors and lawyers and law enforcement.

Q. Okay. When it comes to the application of medical science, would it be fair to say that there is generally one group or groups that are involved in research and publication, other groups that are involved in the practical application?

A. Yes. We – we at the Medical Examiner's Department have – have a job to do, and that is to determine the cause and manner of death. We really do not have much time for experimentation and research."[340]

Dr. Lew conceded that she did not "have much experience with frozen bodies"[341], and that her observations of deceased persons who are the subject of police investigations in Florida where the weather is extremely warm, would be quite different from those where the body was frozen. She confirmed that she is frequently asked to express an opinion as to the possible causes of wounds in her practice.

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[340] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8123-8130.

[341] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8139.

She confirmed that she had seen photographs provided of Neil Stonechild, but did not recall reading any of the reports. She examined the photographs of the marks on his face and hands to provide an opinion as to the possible causes of the wounds. She was asked under cross-examination how long she inspected the photographs before arriving at an opinion on the matter:

> "Q. Well, I – I thought that you had agreed to that this morning, but in any event how long did you see those photographs for when you came to your conclusion?
>
> A. You mean how long –
>
> Q. Yeah, how long did you look at them –
>
> A. – did it take to look at them? **Well, a few minutes.**
>
> Q. – before you have that opinion? **A few minutes.**
>
> A. Perhaps a few minutes. It wasn't hours, I don't believe."[342] (Emphasis added)

She confirmed, also, that arrangements were made by the Saskatoon Police Service to have the photographs[343] enhanced at the University of Saskatchewan to see if she could form a better opinion as to the nature of the marks.

Dr. Lew described the two abrasions on Neil Stonechild's face, and confirmed that they were straight and parallel. In her opinion, the scene photographs of the nose injury, rather than the autopsy photographs, more accurately depict how this injury would have looked at the time of death, because the frozen body had likely not yet undergone post-mortem changes that would alter the appearance of the injury.

Dr. Lew confirmed that a handcuff may cause an abrasion to the skin. I refer to her answer:

> "A. It depends on the mechanism of that injury. If you take a handcuff and scrape it hard across the skin of the nose you can cause an abrasion. That doesn't necessarily break cartilage or bone. It will just tear away the superficial layers of skin, leaving you with a scrape of the skin or an abrasion."[344]

However, she stated that they were not, in her opinion, caused by handcuffs, but she did not know how the injuries originated. She was then asked this question:

> "Q. Okay. And in looking at photographs that were available to you of the scene, did that assist you at all?
>
> A. Yes. At the scene Mr. Stonechild's body was found face down. His face was into a – I guess a clump of stems and – and grasses which would be very hard at that time that the body was found because everything would be frozen, all vegetation would be frozen. The stems and pieces of grass were sticking upright, and if Mr. Stonechild were to fall face down onto that clump of vegetation he could very well have sustained the injuries on his face from those pieces of vegetation.

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[342] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8258

[343] Death Scene and Post-Mortem Photographs enhanced by University of Saskatchewan, Inquiry exhibit P-188

[344] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8190-8191

> Q. Now, you've indicated that you did not consider the abrasions to be consistent with handcuffs. Can you expand on your reasons for that opinion?
>
> A. Yes. The edges of the bracelet of a handcuff are relatively smooth. There is one area on the interlocking part of the handcuff where there are teeth. Those edges are jagged. However, the spacing between the abrasions on the nose and the spacing between the – the teeth on that particular portion of the handcuff are not the same. And if you were to look anywhere else on the pair of handcuffs, it is not possible for handcuffs to produce those line-like, fairly superficial but fairly thin and straight line-like scrapes."
>
> ...
>
> "A. ...An abrasion of this sort is made by a relatively sharp edge. The blunt edge of the metal bracelet will not cause an abrasion. Sure, the bracelet of a handcuff is very capable of causing other injuries, but those injuries would be more blunt-force type.
>
> In other words, if you were struck with any other part of the handcuff except for those teeth, and struck with enough force, you would get a bruise, you could get a cut or what we call a laceration, which is a tear of the skin, and with enough force you can break the nose. But, as I said before, all other parts of the handcuff are smooth apart from these little teeth which are capable of causing the scrapes or abrasions."[345]

Lew testified that a fall into vegetation was more likely the cause of the nose injury. There was a great deal of discussion about the marks to Mr. Stonechild's face being caused by frozen vegetation. Dr. Lew was asked:

> "Q. Okay. Or if someone who had these handcuffs in their hand and they were using them as brass knuckles and had somebody's nose like this and went like that, then you'd have those kind of marks being made as well?
>
> A. Yes, you can have that pattern, yes.
>
> Q. Okay. Now the suggestion is made that those marks were made by vegetation. And I guess the first cautionary question that rises in my mind, at least, is the fact that they are parallel?
>
> A. Yes, they are.
>
> Q. If we have a look at the vegetation, and if you have in front of you photograph 15 of the eight-and-a-half-by-elevens?
>
> A. Yes.
>
> Q. That is a photograph of, essentially, the pocket that Mr. Stonechild's face rested in. There's virtually no snow at the bottom of that pocket and you see quite an array of vegetation, is that true.
>
> A. Yes.
>
> ...

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[345] Evidence of Dr. Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8161-8163

Q. And certainly you and I have a better vantage point looking at this photograph than the screen there. But we don't need to, I suppose, be too precise about saying that the vegetation occurs several inches below the surface of the snow, is that fair enough?

A. It looks like it, yes.

...

Q. Okay. And if I was to suggest to you that there was really no evidence of any snowfall on the back of the body when it was found, so that we don't have that indication that there was that kind of snow – snowfall after the body came to rest there. That being removed, we do have the fact that the face would have to travel through several inches of snow before it came to rest in that spot?

A. Yes, it would travel several inches before reaching the ground, yes."[346]

...

"Q. No, and – and – and in looking at the photographs, you obviously can't see any blades of grass in the photographs that would have caused that damage, like there weren't any serious twigs or trees in that area, correct?

A. Well, we are working from photographs and the orientation of the grasses and stems were likely disturbed by the body falling down on to it.

Q. Yeah, but – but, again, there's – there's – you can see the photos as well as I can and we can put them up on the board again, but there's absolutely no indication of any significant pieces of wood or twigs or tree that might cause those cuts. All there is, is grass, correct?

A. Well, in the scene photographs there are areas in the terrain where there are thicker pieces of vegetation that look like stems.

Q. And – and how many cases have you seen where stems, which are grass of a type, stems cause that kind of damage to somebody's face? Have you any cases like that?

A. I may have seen, yes."[347]

Dr. Lew, however, backtracked somewhat from this position later under cross-examination:

"Q. It could. Thank you. Now, do you know Dr. Michael McGee who's the – also a forensic pathologist?

A. No, I do not.

Q. Do you know of him?

A. I believe he may be the pathologist that had given a consult report on this case.

Q. Sure. So you've heard of him or somebody has told you about him?

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[346] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8218-8220

[347] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8266-8267

> A. Yes.
>
> Q. And – and I'm told that he – he doesn't believe the abrasions to the nose are consistent with being caused by twigs or branches. He indicates they are too straight and too parallel. He indicates that they're most probably caused by a formed edge. He described a formed edge as one that is prepared, created or machined such as a block of wood or a piece of metal. Now, if – if we assumed that that's something that he said, could you possibly find your way clear to agreeing with him on that?
>
> A. Yes."[348]

Dr. Lew also commented that in her opinion, the injury to the nose occurred within minutes, rather than hours, before the death. Under re-examination, she stated that she could not rule out the injury occurring 30 minutes before death.

She also expressed the view that the mark on Stonechild's wrist was not consistent with handcuffs. She stated that the indentation appeared to contain striations inconsistent with a mark left by a smooth surface like a handcuff, and that she did not observe the double strands of a handcuff in the indentation. I quote from her testimony:

> "A. ...That mark is an indentation. You can see that there's an indentation in the skin. That mark is patterned in that it is – goes across the hand, it is not just an imprint of something nonspecific. It looks like it's straight across the – back of the hand. It is also pale.
>
> ...
>
> And by looking very carefully at the mark on the wrist I can see that it is not consistent with a handcuff. It has certain very fine details on that mark that indicated it is not from the smooth metal of a handcuff bracelet. Not only that, the mark varies in size from one side of the hand to the other.
>
> ...
>
> A. Perhaps the best photographs would be 19, 20 and 21.
>
> Q. Mr. Stack, I wonder if you could put up – start with photograph 19.
>
> ...
>
> A. ...Now, in this mark on the hand you can see here is the – the wrist is right here. Here is the – the fleshy part of the thumb, and so you can see that the – that – you can see that the mark is between the wrist and really the fingers and the base of the thumb which is around here. So you can see clearly where it is on the hand. All you have to do is hold up your own hand and see the similarities. The width of the mark at this end or the thumb end is wider than the mark at this end, the little finger end, and in the photographs where I do have the benefit of some detail, I'm able to see subtle striations that go longitudinally or along the axis of the arm up and down, fine striations I'm able to make out that are approximately I believe in my report I described them as being three to four millimetres apart. But in addition to those striations within – or between those striations, I see other even more

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[348] Evidence of Dr. Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8278-8279

> fine – finer striations that are parallel with all these striations which are at right angles to the mark across the back of the hand, and those I estimated to be approximately one millimetre apart.
>
> And looking at the handcuff you will not get an impression like that on the hand from a handcuff. A handcuff is very smooth, it will not have those striations, it will not have those fine striations in addition to the I guess the wider – more widely-spaced striations.
>
> …
>
> A. …And those – if, again asked my opinion on the cause of that indentation, it is not consistent with a handcuff but it would be consistent with the – the weave of the fabric of clothing such as from a cuff from a shirt or a jacket.
>
> Q. Now, you have had the opportunity of reviewing the scene photographs. You can take that one down, Mr. Stack. And you've indicated, of course, in commenting on the abrasions to the nose that that's part of, you know, one has to look at what the surrounding – what clues are yielded by the surrounding circumstances in those photographs. I assume the same applies with respect to the wrist, in particular the photographs would seem to indicate that Mr. Stonechild's hands are drawn within the cuffs of the coat. Do you agree, first of all, with that observation?
>
> A. Yes, I do.
>
> Q. Now, was there anything then that you're able to observe based on, admittedly, the limited information you have as to the scene, the photographs there, that would support your theory that it was caused by – it could have been caused by the cuff of a shirt or something like that? In other words, is there anything that you're seeing that – that supports that conclusion?
>
> A. Yes, exactly what you have mentioned, the fact that his hand was drawn inside the – the cuff of the sleeve of his jacket. He was wearing other clothing as well. Had he been found with his hand outside the sleeve area, then you would have to find some other explanation for that indentation."[349]

I must observe that the above answer makes no sense. With his sleeves pulled down over his hands, the ribbed cuff would simply not have any bearing or effect on his wrist. Further, ribbed or elastic cuffs are not typically associated with lumber jackets; the clothing that Stonechild was wearing underneath his bomber jacket. This point was put to Dr. Lew by Counsel for the Stonechild family:

> "Q. Now, I think photograph number 8 indicates a number of things, one, that Neil's hands are well within the sleeves of his jacket.
>
> A. Yes, I agree."
>
> …

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[349] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8168-8174

"Q. …I think, concluding that his clothing, given that it would appear that the only thing that would possibly be around his wrist or wrist-to-hand area would be that soft cotton lumberjacket coat if we assume that the t-shirt is short-sleeved, and we've already established that the sleeves of his jacket are not anywhere – are not capable of making those marks given – given where they are. Is that – is that fair?

A. **Let's put it this way. We are not able to correlate because we don't have photographs of the clothing or the clothing available to compare with.**

Q. Okay. So basically we're just not able to say for sure whether or not Mr. Stonechild's clothing made those marks on his wrist?

A. We're not able to say which item of clothing made those marks, that is correct.

Q. Or – or in fact if – if – if any of his clothing did, given as we don't know what he's wearing here.

A. That is correct."[350] (Emphasis added)

As Dr. Lew herself noted, the most that can be said is that:

"A. By looking at the photographs it does not appear that freezing and thawing has changed this indentation on the hand. The very act of freezing does not produce indentations; the very act of thawing does not produce indentations. **Something caused this indentation.**"[351] (Emphasis added)

Counsel for the F.S.I.N. went further to suggest to Dr. Lew a possible scenario whereby handcuffs could cause such an indentation:

"Q. Well, pretty close, wouldn't it? Now, I'm giving you a scenario as a hypothetical and I know that you want to be fair, witness. The hypothetical being that if Stonechild was resisting, an officer pulling him by the other cuff, in other words, it's not on the other hand –

A. Right.

Q. – you would get that cuff mark in a very similar position to what's on the hand.

A. Yes, if the cuff was loose enough to be down in that position, yes, there could be a mark.

Q. Yes, and so I'm – I'm asking you to visualize the possibility. Now, you see, you don't know what happened here, do you?

A. No.

Q. And I don't, okay, and the Commissioner is the only one who will know, but we don't know right now. So let me just put it to you this way: if he was in that police car and was resisting, the police will take one cuff off and get him out of the car and take the cuffs off.

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[350] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8248-8249

[351] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8175

> A. Yes.
>
> Q. He's resisting going out because they know he's going to be thrown out in the middle of nowhere.
>
> A. Yes.
>
> Q. And he's pulling back and resisting.
>
> A. Yes.
>
> Q. If they're pulling –
>
> A. Yes.
>
> Q. – on the cuff, you might well get the kind of mark that's shown on the wrist then.
>
> A. Yes, that's possible you would get some sort of a mark, yes.
>
> Q. Yes, and in that location.
>
> A. Yes."[352]

Later during cross-examination, she was asked:

> "Q. Okay. But, you see, the other thing that I'm thinking is if we have the posts in there that I hypothesized for you, I mean, you – you've got to have pressure going towards the front of the hand and that's going to cause the rubbing and would cause the markings too?
>
> A. It could."[353]

Dr. Lew had also expressed the view that the wrist indentation was created after the death of Stonechild. She stated:

> "This paleness indicates that the heart was not beating, there was no blood being sent to this area, and therefore it looks so consistent with other postmortem indentations that I have seen. Not only that, it looks very similar to indentations, other pale indentations on the abdomen which can be seen in some of the photographs. So there's an indentation on the wrist, there are indentations on the – on the abdomen that are postmortem."[354]

However, under re-examination Dr. Lew acknowledged that the ability to date such wounds is highly controversial:

> "Q. The dating or the timing, estimating the time of an injury in relation to death, is that a matter, to your knowledge, that is controversial among forensic pathologists? That is, by controversy I mean there may be differences of opinion?
>
> A. It is very much in controversy and again when you – **if you take a group of ten forensic pathologists they may give you ten different opinions.**

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[352] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8269-8271

[353] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8278

[354] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8168-8169

Q. Now, you're familiar with, at least in his professional manner, a Graham Dowling from Edmonton?

A. Yes.

Q. Dr. Graham Dowling? And he has testified at this inquiry and, in fairness, I just want to put to you what he said about the timing of the wound of the injury to the nose, and I want to read the question and answer to you, and I'm at page 1288 of the transcript. The question, and this was actually my questioning, "In your professional opinion then, based on the photographs, if a person is restricted to photographs, is it possible to make any useful analysis of the age of the wound?" His answer, "As in – as in everything else, I would certainly be reluctant. I just don't think you can say very much. I could say in very general terms they appear quite – they appear quote unquotes fresh as opposed to old, but fresh to me can mean anything from minutes to hours and…really that's the full extent of anything I can say." Now, I just want to – I'm not sure you're saying much different than he is there, but do you disagree with that statement of Mr. Dowling?

A. No, I do not disagree.

Q. Dr. Dowling, sorry.

A. No, I do not disagree, and as **I said earlier you can line up ten forensic pathologists and you can get ten different answers.**"[355] (Emphasis added)

Dr. Lew also testified that "the Forensic Pathology community knows how notoriously difficult it is to age injuries."[356]

While I accept Dr. Lew is a very experienced Forensic Pathologist, I do not accept, based upon her own admission, that the field of Forensic Pathology has yet developed a reliable technique for the dating of injuries. As noted by Mr. Justice Sopinka in *R. v. Mohan:*

> "Expert evidence which advances a novel scientific theory or technique is subjected to special scrutiny to determine whether it meets a basic threshold of reliability."[357]

As a result of Dr. Lew's admission that one could have ten different opinions from ten different forensic pathologists about the date of an injury, I conclude that her evidence on this point is unreliable.

Having reviewed the evidence of Dr. Lew in detail, I am not convinced by her opinion that the cause of the injuries to Mr. Stonechild's face was the result of falling into brittle or frozen vegetation. The likelihood that the two abrasions, notwithstanding the fact they are simply characterized as breaks in the skin, would be caused fortuitously, by two unrelated, parallel objects, is extremely unlikely. The photographs of the death scene and of the vegetation at the scene do not support that conclusion. The more probable cause was a blunt object that contained parallel edges. Handcuffs fit that characterization much more closely than random strands of vegetation.

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[355] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8325-8327

[356] Evidence of Dr. Emma Lew, Inquiry transcript, vol. 42 (March 17, 2004): 8280

[357] [1994] 2 S.C.R. 9 at 25

Similarly, I had difficulty with Dr. Lew's characterization of the so-called "striations" on Neil Stonechild's wrists. The evidence established that he had his sleeves pulled down over his hands to keep them warm. If there was a cuff that might cause marks of some sort it would not be in relation to his wrist. I refer, of course, to the cuffs that would be on his jacket. I am satisfied that the lumber jacket that he wore likely had button cuffs and would not have contained cuffs of the sort one would see on a windbreaker. I shared the same experience as other observers at the Inquiry: I could not see any striations of the sort described by Dr. Lew. If I stood alone in this failure I might feel differently. I would respectfully suggest that Dr. Lew was enhancing her opinion, because of the desire to support her opinion. The enhancement was not justified.

Overall I did not find the evidence of Dr. Lew very helpful.

I pause to note that at the conclusion of the Inquiry, I was provided with a copy of a proposal prepared by Dr. Evan Matshes and Dr. Emma Lew. It is entitled "Competent Death Investigation: A plan for change in Saskatchewan". I have had an opportunity to review the recommendations briefly but it would not be appropriate in the circumstances for me to comment on them as they are quite comprehensive and involve a number of important questions about infrastructure, financial resources, and the like, and particularly the question of recruitment of appropriate personnel.

A well respected Saskatchewan forensic pathologist, Dr. Harry Emson, has provided a critique of the report in a letter to the Saskatoon StarPhoenix published June 18th, 2004. That letter has been added to the Inquiry file for the information of any person interested in the discussion about the possible establishment of a Medical Examiner System.

9 | The Expert Evidence – Photogrammetric Evidence

Gary Robertson[358]

Gary Robertson was one of the most controversial witnesses at the Inquiry. He is an expert in photogrammetry.

Photogrammetry is described as "the science and engineering of taking measurements from imaging"[359], whether electromagnetic media or photographic images. Photogrammetry is utilized in a number of different fields as a measurement tool. It has been used by the Transportation Safety Board to assist in crash investigations. It has also been used by a number of police agencies in the United States and in Canada as a forensic identification resource. Photogrammetry has also been used as a tool to assist in the measurement of human tissue imprints.

Mr. Robertson's education was outlined in some detail. He received his Cartography Technician (Photogrammetry) Diploma from Algonquin College of Applied Arts and Technology in 1973. He has conducted research for the National Research Council and was employed by the Government of Canada from 1976 to 1980 doing close range photogrammetry at historic buildings and other structures. He is a member of the American Society in Photogrammetry and Remote Sensing. He has authored a number of articles on the subject and has given a number of courses to police officers and others in his specialty.

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[358] Evidence of Gary Robertson, Inquiry transcript, vol. 21-23 (October 20-22, 2003): 3958-4428

[359] Evidence of Gary Robertson, Inquiry transcript, vol. 21 (October 20, 2003): 3963

In the course of testifying as to his qualifications, Robertson was questioned about his curriculum vitae. It contained the following statement:

> "Q. And it states, '1976 to '77 under government sponsor attended University, sorry,' 'attended Ottawa University to complete credits for certification in civil engineering.'
>
> A. Right."[360]

Robertson conceded, after lengthy cross-examination, that he had not in fact completed the courses. Counsel suggested that his misdescription was intended to enhance his qualifications, and that it cast doubt on his reliability. The real question, however, is whether it impacts in any significant way on his opinion at this Inquiry as to the marks on the body of Neil Stonechild. An expert's opinion is not discarded, because of an error in his or her curriculum vitae. I was referred by Counsel to the comments of Sopinka, Lederman, and Bryant in the *Law of Evidence in Canada,* pages 536, 537. I quote:

> "The test of expertise so far as the law of evidence is concerned is the skill in the field in which the witness opinion is sought. The admissibility of such evidence does not depend upon the means by which that skill was acquired. As long as the court is satisfied that the witness is sufficiently experienced in the subject matter at issue, the court will not be concerned with whether his or her skill was derived from specific studies or by practical training, although that may affect the weight to be given to the evidence'.
>
> And the authors go on to refer to a decision in *Rice versus Socket.* It says, "The derivation of the term 'expert' implies that he is one who, by experience, has acquired special and peculiar knowledge of the subject of which he undertakes to testify and it does not matter whether such knowledge has been acquired by study of scientific works or by practical observation."[361]

The witness was also confronted with the comments of a Dr. Williamson, an expert who testified at a U.S. trial in which Robertson's evidence was also presented. Williamson took exception to the opinions expressed by Robertson as a result of his photogrammetric analysis. As I pointed out to counsel during the hearing, without knowing the circumstances of that trial, I cannot draw any conclusions as to the accuracy of Robertson's opinion or Dr. Williamson's.

Commission Counsel pointed out that Robertson was employed by the RCMP to conduct the tests he described. Obviously the RCMP thought his credentials were sufficiently reliable to ask his opinion. The witness also referred to a number of appearances which he has made in Canadian courts at the Provincial and Superior Court level.

Commission Counsel made it quite clear that the witness was being asked a very narrow question.[362] The following comments are illustrative:

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[360] Evidence of Gary Robertson, Inquiry transcript, vol. 21 (October 20, 2003): 4032

[361] Evidence of Gary Robertson, Inquiry transcript, vol. 22 (October 21, 2003): 4149-4150

[362] I refer particularly to Evidence of Gary Robertson, Inquiry transcript, vol. 21 (October 20, 2003): 3959, 4020-4021, and 4079

> "MR. HESJE: Now, Mr. Commissioner, it's – we've called Mr. Robertson to provide expert evidence in the area of image processing, image interpretation and application of photogrammetry, that is to the making of measurements from an image or photograph. The purpose of his evidence is to provide – the purpose of his testimony, I should say, is to provide evidence as to measurements of imprints on the body of Neil Stonechild and a comparison of those measurements to measurements of a known object."[363]

In the final analysis, Robertson's evidence is limited to his methodology in measuring marks on Neil Stonechild's face and wrist elicited from enhanced photographic images obtained at the autopsy and in correlating those observations to determine if the measurements of the marks were consistent with the measurements of a known object. He was not asked initially to correlate the measurements of the marks with the measurements of handcuffs. Indeed, in his initial examination and analysis, he knew nothing about handcuffs as a possible cause or indeed anything else. Later he was provided with a set of Peerless handcuffs—the type used in 1990 by Saskatoon Police Service—and asked to measure the dimensions of these handcuffs.[364]

In doing so, he commented on the controls used to verify his observations:

> "Q. All right. And as I understand it, in order to positively identify or individualize an impression as having originated from a specific source one must follow what's called the principle of individualization?
>
> A. That's correct.
>
> Q. And can you confirm for me that this principle states – or do you know the principle without me reading it to you and that you can advise us?
>
> A. I have a pretty good idea, but – yes.
>
> Q. Okay. Well if I suggest to you the individualization of an impression is establishing by finding agreement of corresponding individual characteristics of such number and significance as to preclude the possibility or probability of their having occurred by mere coincidence and establishing that there are no differences that cannot be accounted for? Is that –
>
> A. That's correct?
>
> Q. – the principle?
>
> A. Yes.
>
> Q. And is that the principle that you apply in coming to whatever conclusions you come to with respect to this matter?
>
> A. Yes.
>
> Q. All right. And as I understand it, precise measurement comparisons on skin versus physical objects are seldom exact due to the elastic properties of the skin?

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[363] Evidence of Gary Robertson, Inquiry transcript, vol. 21 (October 20, 2003): 4020-4021

[364] Letter of Gary Robertson to RCMP, dated November 30, 2000, Inquiry exhibit P-101

A. Yes.

Q. And if that's so that the dimension attributes for the skin will be larger than the physical object because of the –

A. Not always, because it depends on where you're taking the measurement from.

Q. All right.

A. But it would have – yeah.

Q. Then would that be what you would ordinarily expect, that the dimension attributes for the skin will be larger than the physical object?

A. It's not all the cases.

Q. Okay. Would that be the general proposition or not?

A. Yeah, there's a possibility, yeah.

Q. Okay. And so with the principle of individualization you would have to account for any differences before an impression can be individualized?

A. Yes.

Q. That's in accordance with the principle? And in this case, applying that principle and being an expert as so qualified by this Commission, you came to a conclusion that a positive identification could be made in this case with respect to what caused the impressions?

A. Yes. There was five particular areas of the mark on the wrists that I measured had corresponding dimensions that would correspond to the handcuff that would meet that criteria.

Q. All right. So based on your analysis you came to the conclusion that the marks found on Mr. Stonechild are consistent with having been made by Peerless handcuffs; is that not so?

A. They – yeah, the dimensions would match to the handcuffs that I measured.

Q. Well I'm going further than that. I'm saying that you came to the conclusion – you can correct me if I'm wrong – that the marks found on Mr. Stonechild are consistent with being made by Peerless handcuffs?

A. That's correct, yes.

…

Q. Okay. But in this case you precluded the possibility or probability of this having happened, that is, the factors that fit in were a mere coincidence?

A. Yes, I mean it wasn't – if it was just two areas, then I wouldn't be able to make that statement. But if you have five consistent areas, that's the – how I based it on. But as far as statistical information, I can't comment –

Q. No, and I'm not –

> A. – on that.
>
> …
>
> THE COMMISSIONER: Because as I understand your assignment, you were simply to measure these two elements, the marks you say, and to measure the handcuffs and indicate what the points of similarity were, or convergence, if you will?
>
> A. Yes. And then I pointed out the five – there was five areas of similarities.
>
> THE COMMISSIONER: But I don't understand you to be saying categorically that these marks were caused by handcuffs. You're saying, because of these two things, those are consistent. That is it's – there's a consistency between the design of the handcuffs and –
>
> A. Right.
>
> THE COMMISSIONER: – the marks that were seen. That's as far –
>
> MR. HALYK: Well –
>
> THE COMMISSIONER: That's as far as he really went."[365]

Ultimately, all Robertson could say that was he identified certain imprints on Neil Stonechild's wrist and he was able to measure those points in relation to each other and create a diagram showing their relationship.[366] From these observations he was able to say that handcuffs could have caused the marks, but some of his evidence, as I understand it, went further: The imprints were likely caused by handcuffs.

Similarly, he testified that the marks on the young man's nose and face were consistent with the forceful application of the set of handcuffs. He prepared a photograph of the deceased youth's face on which he superimposed a set of handcuffs.[367]

I pause to note that evidence came to light shortly before the Inquiry that the handcuffs used by Cst. Hartwig and Cst. Senger in 1990 had different dimensions than the handcuffs measured by Gary Robertson.[368] The difference in the measurements of the two sets of handcuffs, however, is insignificant as the difference is no greater than the margin of error that Robertson had identified in his report.[369]

An enormous amount of attention was paid in cross-examination to the factors which might affect the accuracy of his measurements and his conclusions. In my respectful view, the witness's opinions on the narrow questions put to him by Mr. Hesje were never successfully challenged. Were his measurements accurate? They were. Was he able to demonstrate a convergence or a correlation between the marks and a known object, such as handcuffs? He was. We were reminded by Commission Counsel that Robertson was called before the Inquiry because of his part in the RCMP investigation. The objective was to see that every bit of information made available to the RCMP was brought forward to the Inquiry and to that extent, Robertson's participation was necessary. I must say that I was dismayed by the amount of time devoted to his evidence and the intensity of his cross-examination. It is not necessary for me to accept his evidence as to the cause(s) of the marks on Neil Stonechild's body in order to reach the conclusion set out hereafter. However, given his treatment during the Inquiry, it is appropriate that I comment on his evidence and my conclusions in respect to it.

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[365] Evidence of Gary Robertson, Inquiry transcript, vol. 22 (October 21, 2003): 4197-4203

[366] This appears in Robertson Report to RCMP, Inquiry exhibit P-103

[367] This appears in Robertson Report to RCMP, Inquiry exhibit P-103

[368] Memo of Cst. Shelley Ballard to Barry Rossmann, dated October 1, 2003, Inquiry exhibit P-138

[369] Evidence of Gary Robertson, Inquiry transcript, vol. 22 (October 21, 2003): 4184-4185

Robertson's evidence established the origin of the marks on a balance of probabilities. His evidence confirms a suspicion of that which is obvious to the naked eye. It is also a suspicion that Keith Jarvis shared with the RCMP shortly after viewing the photographs for the first time in 2000:

> "**I have seen marks very similar to that myself over the years as a police officer.** It can be the result from someone being placed in handcuffs who has been detained. It could be from [unintelligible] many things. ... Ah ... often times you don't even have to put handcuffs on tight an' people move their hands around an' can get marks ... It could be from anything really, looking at it, looking at the marks in the photographs ah ... **I'm not an expert but I would say it would probably be consistent with handcuffs.**"[470] (Emphasis added)

The suggestions that clothing would have been a cause is without merit as I have noted elsewhere. So is the suggestion that vegetation caused the abrasions to the young man's face. Ultimately, Robertson's evidence was helpful and played a part in establishing what likely happened to Neil Stonechild on the evening of November 24/25.

10 | The Expert Evidence – Memory Experts

In this section, I examine the evidence of experts who were called to provide opinion evidence with regard to memory formation and retention. I begin with the evidence of John Richardson. His evidence had a broader purpose. He was called to calculate blood alcohol levels given certain assumptions, and to discuss the likely effect of such blood alcohol levels on an individual's physical and neurological functions. He is included in this section as one of the most central aspects of his testimony was the likely effect of alcohol on memory.

John Steven Richardson, Ph.D.[471]

John Richardson has a Bachelor's Degree from the University of Toronto in Honours Psychology. He has a Masters Degree from the University of Vermont in Experimental Psychology. He obtained his Doctorate in Psychopharmacology in 1971 from the University of Vermont. Psychopharmacology is the study of the effects of drugs on brain function. He is currently a professor with the Department of Pharmacology at the College of Medicine, University of Saskatchewan.

Dr. Richardson was qualified to give opinion evidence on the following points:

(a) the calculation of blood alcohol content at various points in time, based on certain assumptions as to rates and amounts of consumption; and

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[470] Transcript of RCMP interview of Keith Jarvis on October 12, 2000, Inquiry exhibit P-107.

[471] Evidence of Dr. Richardson, Inquiry transcript, vol. 30 (January 5, 2004): 5731-5850, and Inquiry transcript, vol. 31 (January 6, 2004): 5851-5914.

(b) the impact of various levels of blood alcohol content on the physical and neurological functions, focusing on the brain and memory.

Dr. Richardson was asked to provide an opinion as to the blood alcohol concentrations in an individual with approximately the same height and weight as Jason Roy in November 1990. Dr. Richardson was to assume that this individual consumed from 9 to 16 ounces of vodka over a period of four hours. Dr. Richardson was asked for his opinion as to what this individual's blood alcohol concentration would be an hour after the last consumption. Dr. Richardson testified that had this hypothetical individual consumed 9 ounces, the expected blood alcohol concentration an hour after the last consumption would be approximately 120 mg percent with a range on either side of the 120 mg percent of approximately 14 mg percent (ie. the range would be from 106 mg percent to 134 mg percent). He testified that in the event that this individual consumed 16 ounces, the expected blood alcohol concentration would be approximately 278 mg percent with a range of approximately 14 mg percent on either side of the 278 mg percent.

Dr. Richardson was also asked to provide a similar opinion of blood alcohol concentrations in an individual of approximately the same height and weight as Neil Stonechild. He testified that had such an individual consumed 9 ounces of vodka over a four-hour period, the expected blood alcohol concentration one hour after the last consumption would be approximately 96 mg percent, plus or minus a range of 14 mg percent. If this same individual had consumed 16 ounces over four hours, Dr. Richardson's opinion was that the expected blood alcohol concentration of this individual one hour after the last consumption would be approximately 235 mg percent with a range of plus or minus 14 mg percent.

Richardson testified that there are two factors that affect the degree of impairment an individual will experience from a given blood alcohol concentration. One factor is the innate physiology of the individual. He explained that, for reasons not yet known, some individual's brains are very sensitive to disruption by a beverage alcohol, while the brains of other individuals are very resistant to disruption by alcohol. The second factor offered by Dr. Richardson is the innate compensatory mechanisms of the brain to counter the effects of alcohol consumption. This is commonly referred to as "tolerance". After repeated exposure to beverage alcohol, the brain cell compensatory mechanisms will counteract the depressant effects of alcohol. As a result, brain cells continue to function normally notwithstanding the fact that the individual has a blood alcohol concentration that had previously disrupted brain function. This tolerance phenomenon can be present in relatively young individuals. These two factors introduce a great deal of variability into the task of estimating the degree of impairment resulting from a certain level of blood alcohol concentration.

While recognizing that the effect of alcohol consumption can vary greatly from individual to individual depending upon the individual's physiology and past alcohol consumption, Dr. Richardson testified as to the expected effects of various levels of alcohol consumption on the average person. He testified that he would expect there to be very little change in the brain function of an average person with a blood alcohol concentration of 80 mg percent. The average person typically becomes seriously intoxicated somewhere between 130-160 mg percent. The obvious signs of serious intoxication include slurred speech and motor impairment. The judgment of an individual is also typically impaired around this level of alcohol concentration. A blood alcohol concentration of around 230 mg percent can typically produce what is referred to below as an alcoholic blackout. An average person with a blood alcohol level with around 270 mg percent should be obviously intoxicated to everyone. Their ability to control their arms and legs and to speak would likely be seriously disrupted. The average person with such a blood alcohol concentration should be "falling down drunk", if not unconscious.

Dr. Richardson also testified as to the effect of alcohol consumption on memory. He discussed two effects that alcohol can have on memory formation. One factor is that alcohol can prevent the brain from performing its typical task of unconsciously scanning the surrounding environment. As a result, an intoxicated person may have a fairly good memory of what he or she is concentrating on but not have a particularly good memory of peripheral things that are happening around them. The consumption of alcohol can therefore reduce the richness of an individual's memory.

The other effect that alcohol consumption can have on memory formation is "alcoholic blackout". The brain cells that are responsible for transferring information from short-term memory into long-term memory are particularly sensitive to suppression by alcohol. At higher blood alcohol levels, the transfer from short-term memory storage into long-term memory storage can be completely halted. This chemically induced amnesia typically requires blood alcohol levels above 230-240 mg percent. Dr. Richardson testified that one would expect to see an alcoholic blackout in situations where the individual was "falling down drunk" and was having great difficulty expressing himself or herself.

He testified that even individuals who have consumed enough alcohol to halt the transfer from short-term memory to long-term memory may form a memory of an actual event if that event was something quite out of the ordinary such as a loud noise, bright light, cold experience, pain, or an anxiety provoking experience. These extraordinary events temporarily override the suppression of alcohol and result in what Dr. Richardson called "an island of memory within a sea of amnesia".[371]

In regard to the impact of alcohol on the reliability of memory, Dr. Richardson testified that he is aware of literature and anecdotal cases that suggest the brain will attempt to consciously or unconsciously fill in memory gaps resulting from alcohol consumption. This phenomenon can result in the creation of memories of circumstances and events that did not actually occur.

Dr. William James (Jim) Arnold[372]

Dr. James Arnold is a Clinical Psychologist practicing in Saskatoon. He received a doctorate in Clinical Psychology from the University of Saskatchewan in 1990 and is registered as a Doctoral Psychologist with the Saskatchewan College of Psychologists. From 1988 to 1994, he was a Young Offender Psychologist at the MacNeill Clinic. Since 1994, he has been in private practice. He described the focus of his practice as psychological assessment, health psychology, and the general practice of counseling.

In large part, Dr. Arnold was called in response to evidence provided by Brenda Valiaho. She described a visualization process she employed when counseling Jason Roy in late

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[371] Evidence of Dr. Richardson, Inquiry transcript, vol. 30 (January 5, 2004) 5798. Dr. Richardson agreed with Counsel for the Stonechild Family that the being stopped by a police officer could be an anxiety producing event that would override the suppressive effects of alcohol and allow for a long-term memory.

[372] Evidence of Dr. W.J. Arnold, Inquiry transcript, vol. 37 (March 10, 2004) 6930-7124.

2001. She also gave evidence that she discussed the counseling with someone at the MacNeill Clinic who she thought was Dr. Arnold.

Dr. Arnold was also asked to testify as an expert in the area of memory formation and recovery. There was much debate about his qualifications in this regard. I concluded that his qualifications did not transcend those of the ordinary Clinical Psychologist, but his testimony on memory issues could be of some assistance to the Inquiry. The Inquiry, subsequently, heard from Dr. John Yuille who is widely acknowledged as an expert in the area of memory formation and recovery.

Dr. Arnold was confident he did not give Brenda Valiaho the advice she attributed to a Psychologist at the MacNeill Clinic. However, Dr. Arnold's evidence confirmed that the vigorous attacks on the visualization exercises that she conducted with Jason Roy were misguided. Dr. Arnold drew a distinction between therapeutic interviews and forensic interviews. The therapeutic interview is used to deal with psychological problems. The forensic interview is used as a means of gathering information. Dr. Arnold testified that visualization techniques may be appropriate in a therapeutic interview but would be inappropriate in a forensic interview. He stated:

> "THE WITNESS: I would use them in therapy but not for investigation or not for assessment. So they are therapeutic techniques that may assist someone to deal with the symptom or issue but they are not a method of generating facts or data."[374]

He went on to state that he did employ visualization techniques and stated:

> "Visualization would be a part of a larger process. So the individual perhaps is dealing with – a common example is the individual is dealing with either a psychological or a physical pain, or something that is troubling and there are both psychological and physiological consequences. The individual may be tense, may be physically tense as well as dealing with anxiety and other emotions. What's involved is providing them with a frame to understand what you are going to do and then giving them a series of instructions. So there's a piece of needing to encourage the compliance of that individual so that they will go along with the technique, then having them follow the suggestions for what they do, be that relaxing themselves physical, in terms of body parts, be it in terms of directing thought processes to particular content or places, be that about encouraging particular kinds of emotional responses. So it's about creating a frame in which you can change experience and change what the person perceives, thinks about that experience. In some cases it's about transformation, that the person may have a particular way of understanding something and we're looking at helping them to change the way they respond to that so that it troubles them less."[375]

It is clear that Brenda Valiaho employed visualization techniques in the therapeutic sense described by Dr. Arnold. She was not conducting a forensic investigation, taking a statement, or attempting to establish facts. She was simply trying to help Jason Roy deal with issues that were troubling him. As I have noted in my review of Valiaho's testimony, I did not accept her evidence as to what was said by Jason Roy as proof of the events described. Rather, it was evidence of the emotional state of the young man in 1991. As to the suggestion that her technique may have resulted in the formation of false memory in Jason Roy, I have already stated that this suggestion is refuted by evidence that Roy told others about seeing Stonechild in the back of a police car prior to sharing this information with Valiaho.

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[374] Evidence of Dr. W.J. Arnold, Inquiry transcript, vol. 37 (March 10, 2004): 6979-6980

[375] Evidence of Dr. W.J. Arnold, Inquiry transcript, vol. 37 (March 10, 2004): 6980-6981

Dr. Arnold was asked a number of questions related to memory formation which appeared to be directed at the evidence of Keith Jarvis. I give little weight to this evidence for two reasons. Firstly, as noted, Dr. Arnold's expertise in this area did not extend beyond that of a Clinical Psychologist. Secondly, and more importantly, Dr. Arnold was not asked to review the records of the various interviews with Keith Jarvis or his testimony provided to the Inquiry. As such, his comments were necessarily very general in nature. In this area, I put far more weight on the evidence of Dr. John Yuille. His expertise is specifically in the area of memory formation and recovery, and he had the benefit of reviewing both the records of the interviews with Jarvis and his testimony before this Inquiry.

Dr. John Charles Yuille[376]

Dr. Yuille was one of the most important witnesses to appear at the Inquiry. He is a full professor in the Department of Psychology at the University of British Columbia. He obtained his Bachelor of Arts degree from the University of Western Ontario, 1964, a Master of Arts Degree from Western University in 1965 and a Ph.D. from the same institution in 1967. He has been a full professor at the University of British Columbia since 1986, and has conducted research in the general area of human memory for over 35 years. His work has included studies on the memory of children, university students, police officers, witnesses, and victims of crime, and those convicted of crime. He has obtained a number of research grants and awards in respect to his investigation of these areas and has concentrated primarily on the role of memory in the forensic context. In that respect, he has worked with a number of police departments and has trained and lectured to police officers with particular reference to memory, interviewing techniques and credibility assessment. He has testified before many superior and provincial courts throughout Canada and before Royal Commissions.

Mr. Hesje identified the areas in which he intended Dr. Yuille would testify. I summarize from Counsel's question:

> "MR. HESJE: Mr. Commissioner, the areas in which I propose to elicit evidence and opinion from this witness are as follows: first of all, I will ask him to provide an overview of the study of human memory, including the current state of knowledge of eye witness memory; to comment on the types of memory, memory formation, interview techniques and their impact on memory. He will be asked to provide an opinion on the following: whether false memories can be created through inappropriate techniques, the significance of the interviewee's background as it relates to the susceptibility to develop false memory, indicators of false memory, the nature of false memories. And more specifically, he'll be asked to provide opinion on the risk of false memory associated with the interviews conducted of Mr. Jarvis by Martell and the RCMP. He will also be

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[376] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7416-7633

> asked to provide his opinion on the risk of false memory associated with the interview of Jason Roy by Brenda Valiaho. That's the qualification stage, if anybody wishes to speak to that."[377]

The witness was invited to review the transcripts of the interviews conducted by the RCMP and by Mr. Martell of Keith Jarvis, as well as the testimony of Brenda Valiaho in respect to her discussions with Jason Roy. He also reviewed a number of notes and other interviews, all of which are identified in the report which he provided to the Commission. It is entered as an exhibit.[378] The report includes background information and descriptions of the area of human memory and how memory is developed. He identified four different types of memory: procedural, semantic, episodic, and script. The latter is germane to the assessment of the evidence given at this Inquiry. I intend to quote from Dr. Yuille's commentary in this respect at some length because of its importance. I begin with his description of the fourth type (script) of memory:

> "A. ...The fourth kind of memory is mentioned here because it may play a role in certain forensic contexts. A script memory is a blending together of several separate episodes that are similar enough to – so that they can be blended. For example, a victim of domestic violence might start to blend together different episodes of domestic violence into a script. So script is a memory that contains the common elements across several different episodes.
>
> THE COMMISSIONER: But the centerpiece of this, the core is always the domestic violence incident:
>
> A. Yes.
>
> A. And in recalling the violence, for example, the individual may forget individual episodes and be much better able to recall the general pattern which is contained in the script memory. In fact, the way that our memory works is that we tend to remember episodes that are script violations. That is, an episode will be distinctive and therefore remembered if it stands out in some way, if it departs from the routine, the usual way that things happen."[379]

Dr. Yuille also described episodic memory:

> "A. At the time we experience an event we, of course, all of us are limited in terms of our attentional capacity, we can only pay attention to so much information. So we initially perceive a partial version of the event, if you will, whatever parts of it we pay attention to. What we now know about episodic memory is the method of storage of this information is piecemeal, that is, we don't store an episodic memory in a particular place in the brain where it's brought back. Instead, the bits and pieces of the experience are scattered and stored in different parts of the cortex. The consequence of this is that episodic memory when it's recalled is reconstructive, rather than

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[377] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7420-7421

[378] Report of Dr. Yuille, Inquiry exhibit P-178

[379] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7424-7425

> reproductive. So we don't play the memory back like a video tape, instead we reconstruct the event. We find as many of these bits and pieces as is possible to, put them back together and recreate the event.
>
> There's good new and bad news, in a sense, in this aspect of our memory. The good news is because we reconstruct memories we have no upper limit to our capacity to remember, so unlike a computer we don't fill up, we don't find ourselves saying I can't have any new experiences at a certain age. The bad news is that because our memory is reconstructive, of course, we can make errors in reconstruction. And those errors can occur for a variety of reasons but. commonly, they may be because we have reinterpreted the event, and we tend to reconstruct things consistent with how we currently interpret them. Or, alternatively, we may receive information from another source, from an interviewer, from the newspaper, whatever, that we may fill in as we reconstruct the memory.
>
> Also, there is a tendency, unless someone is carefully interviewed, for us to fill in missing pieces in our reconstruction, to make the memory more complete. And we tend to fill in the reconstructions from general knowledge or from script memory."[380]

Dr. Yuille commented on the importance of cues in reconstructing memory:

> "A. Because memory is reconstructed it is very much cue dependent. That is, our capacity to reconstruct a past event depends on the cues that we have available. The fewer the cues and the less salient the cues, the more difficult it's going to be to reconstruct. Most experiences, of course, are quickly forgotten, the usual term in psychology for this is simply normal forgetting that we – that with the passage of time we were unable to reconstruct an event. It isn't really that we have forgotten it, rather the correct way to state this would be to state that I no longer have the right cues to reconstruct that particular event, and this is because events are so normal and routine that there isn't anything to help us.
>
> ...
>
> There are, of course, in contrast to that some events that are not like that at all. The term we've used for these is remarkable memories, these are for events that are unusual. In fact, we use the term remarkable to refer to the double meaning, or the two meanings that word has; first, remarkable in the sense of unusual, distinctive, that it stands out in some way or another; and also remarkable in the sense that these are memories that we tend to think about with the passage of time, so we're remarking on them, either thinking about them to ourselves or telling other people about them, writing them down in a diary, whatever the case may be. These memories do not show the same pattern of loss with time.
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> ...
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> We've been doing research with people that have witnessed murders, witnessed violence, been victims of violence, and for them these memories

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[380] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7426-7428

> often remain quite vivid in detail for months and years and, indeed, for a lifetime. So the typical pattern is normal forgetting but there are exceptions to that and these are remarkable memories."[381]

Dr. Yuille gave this example of a cue:

> "Q. …I am going to pose a hypothetical to you – if I'm asked, "Have you ever been to the home of Mr. Jones?" and I say, "No, I don't think so." And then I'm taken to the home and there's some distinctive feature about the home when I get there, such as an archway leading to the front entrance and I say, "Oh, yeah, now I remember this."
>
> …
>
> Q. Now can those cues sometimes be verbal? And we're going to talk about the risks inherent in that. But to use another example, I say I've never been to Mr. Jones' house, and somebody comes up to me and says, "Well, don't you remember his fiftieth birthday when we had the reception out in the back patio?" Is that also an example of a verbal cue?
>
> A. Yes."[382]

He was invited to give typical examples of recall aids and he gave the following answer:

> "A. One good example is a technique that was developed in the 1970's by a couple of American psychologists Ed Fisher – Ron Fisher and Ed Geiselman. And it's come to be called the cognitive interview. The cognitive interview is – it has that name because the branch of psychology, the sub-field that studies memory is called cognitive psychology, or now cognitive science. And the – what these two gentlemen did was to look through all the research that had been done on memory to see whether there were some – some techniques that consistently assisted recall in terms of improving the amount of information reconstructed about an event without having a negative impact on the accuracy of that information. And they came up with four different techniques.
>
> The first of these is to have the individual recreate the circumstances of the event before recalling the event itself. So this would include trying to remember what the weather was like and how they were feeling and what they had been doing before the event in question. This kind of context reinstatement will often contain some cues within it that will then assist the person in being able to recall more details about the event.
>
> The second recall aid used in the cognitive interview is to exhaust recall. Every time we recall something we edit it to only include those things that we think are germane to the purpose of telling the story. …In the forensic context there can often be minor details that turn out to be quite important. So one of the recall aids is to tell the witness to exhaust their memory, that is, it doesn't matter how trivial or unimportant the detail seems to – if they remember it to talk about it.

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[381] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7428-7430

[382] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7431-7432

> The third and most interesting recall aid is change of perspective. … Interestingly, there are basically two perspectives that one can take when recalling a past event, and one is called the observer perspective and one is called the field perspective. Now the field perspective is that the person recalls the event as they originally experienced it, as they originally looked at it, from the location that they were during the event. The observer perspective is where someone recalls the event as if they're watching it from the outside, so they see themselves in the event. … Some people just naturally recall an event from an observer perspective, some from a field perspective. …
>
> We've found that – through research, that asking a witness to change the perspective from which they recall the event will improve their recall. …And for reasons we don't fully understand, taking this different perspective will often jar someone's memory and they'll be able to recall additional details. It maybe helpful, too, in a traumatic event to have the person relive it from the outside rather than the inside, it may be less emotional for them to recall it that way.
>
> And finally, the fourth aspect of this recall aid is to have the person recall the event backwards. Normally, of course, we recall events in narrative form, at least as adults we do, from beginning through the middle to the end of the story. By asking the person to go backward through the event it, again, may trigger some cues they otherwise wouldn't have and they recall more.
>
> A. …And the good thing about those four examples is they do not negatively impact accuracy, so the accounts remain as accurate, or as inaccurate, just more detailed."[383]

Dr. Yuille described note-taking as an aid to memory:

> "A. The making of notes, particularly contemporaneous notes, is a great memory aid for two reasons. The first is that by making notes the note writer is reinterpreting what's been heard, or seen, experienced, into his or her own words and thoughts. So they're paying attention in a more focused way. So note taking is a way of improving the processing of the event, if you like. But equally or perhaps even more importantly, the notes will subsequently provide cues to reconstruct the event that are often very helpful and without the notes the event may just suffer normal forgetting.
>
> Q. … I'm sure you're familiar with the general police practice of taking notes and using a notebook, that, I presume, is an example of deliberate use of that to assist in recall at a later time?
>
> A. Yes. And most officers, with the passage of time, come to know what kinds of things they need to include in their notes to help them to distinguish this accident or this investigation from others."[384]

Dr. Yuille was questioned about the historic accuracy of memories:

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[383] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7432-7436

[384] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7436-7437

"Q. Now I want to ask you a little bit – it's written in your report, you talk about the terms "truthful" or "deceptive" and at various times "historic accuracy." From your perspective as a psychologist can you tell us what you mean by those different terms?

A. When an individual describes an event, if they're trying to tell the truth, that is, they're describing the event as they're remembering it, then this is a narrative truth for them. This, of course, does not mean that it's historically true.

...

The research with actual witnesses and victims of actual crime suggests that on the average, again, if someone is trying to tell the truth, that eye-witness accounts are around 80 per cent accurate.

...

Then, of course, there are accounts that are deliberately deceptive. And the interesting thing about deceptive accounts is they're usually not entirely untrue. Most lies are partial truths. It's easier to keep them straight, it's very difficult to keep an entire lie, especially if there's a lot of details to it, it's difficult to keep it going. So even lies are a blend of truth and fiction."[385]

Dr. Yuille also discussed the susceptibility of memory to suggestion:

"A. ...We do know that all of us can be susceptible to suggestion under certain circumstances and if someone is provided with suggestions that are wrong, so erroneous suggestions about the event, it's possible that they may incorporate those erroneous suggestions. And what the research indicates on this issue is that it's easier to mislead people about what happened if you pick on things that they didn't notice at the time. ...But if it's something the person paid attention to at the time and is still in their memory, it's much more difficult to mislead them with suggestions.

And finally, I mention here that we may reinterpret events with the passage of time. If we did something really stupid that is not consistent with our self-image, over time we may reinterpret what we did so it's more consistent with the view we have of ourselves.

Q. Now you go on to talk about accuracy being influenced by two cognitive processes: the original monitor and the accuracy monitor. Could you just describe that for us?

A. These are two automatic processes that are – that are always engaged when we're reconstructing an event. One of these processes monitors what we believe to be the accuracy of the information. In common language this is reflected by us saying such things as, "I'm certain about that," or "I don't know, I think this is true, I'm not sure." So we're reflecting the variability that we feel about accuracy.

...

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[385] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7437-7439

> We also monitor the origin of events and, again, in everyday language an example of how the origin monitor can fail is we may find ourselves saying something like, "I'm not sure whether I read this in a newspaper or heard it on the radio, but did you hear about such-and-such?" So here the person is acknowledging that they're just not sure about the origin of the information and again, we can make mistakes here, although generally we're accurate about origin...
>
> Q. Can you comment at this point just generally on the role that interview techniques may play on the reliability of the reconstruction of an episodic memory?
>
> A. The research here is very clear, whether it's laboratory or field research, and that is that the most accurate part of a witness's recall is found in the free narrative phase of an interview. A free narrative refers to that part of the interview when the individual is asked the most open kind of question, like, "What happened?" "What else do you remember?" "What happened next?"
>
> ...
>
> Accuracy then begins to fall if the interview moves to specific questions. For example, a question such as "What did his clothes look like?" Or even more likely to produce an inaccurate response would be, "What colour was his shirt?"
>
> ...
>
> A. ...So this – the debate that was so heated has now been resolved by saying you are both right and in any given case it could be a legitimate case of the recovery of a lost memory, or it could be a created memory and each case has to be dealt with on its own merits."[386]

The following is an exchange between Dr. Yuille and Joel Hesje:

> "Q. You have reviewed the interviews that – that were transcribed, interviews by the RCMP of – and of – by Robert Martell of Keith Jarvis. In your opinion were those interviews conducted in a manner which would create a risk of false memory?
>
> A. No. I didn't see repeated suggestions that – of a kind that would create – that had the boundary conditions I've already mentioned that risk creating false memory.
>
> Q. Now, I – I think that obviously will have to be pursued in more depth, but I have no doubt that it will be done through my friends, and I think I might leave it at that point, and then ask you to comment on your review of the evidence of Brenda Valiaho in respect to her interview of Jason Roy. And, of course, there there was reference to a particular interview technique which was described as visualization. Can you comment on –
>
> A. Yes
>
> Q. – your review of that?

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[386] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7442-7447 and 7451

A. Visualization is a technique that is – I guess self-evident by the term. It's just asking someone to try and form a visual image of an event that they've experienced. In and of itself visualization is – is not leading or suggestive. However, it can be used in a suggestive manner. Indeed, in a – in a study looking at how false memories get created in the "real world", in quotes, Steve Lindsay and Don Read made a list of therapeutic techniques that were – that could possibly lead to false memory, and one of those was guided imagery, which is another term for visualization. But the emphasis here is on the word "guided". So if an interviewer says, "I want you to picture this in your mind and form, you know, a vivid image of it:, this would not necessarily be leading. But if they say, "You're standing in a particular place and you're looking and now you're seeing somebody over there, who is it you're seeing?" In other words if – if the content begins to be guided by the interviewer, then the risk of the person developing a false memory is quite real.

THE COMMISSIONER: So the interviewer – the interviewer cues the examinee –

A. Exactly.

THE COMMISSIONER: – then the risk arises immediately.

A. Exactly.

THE COMMISSIONER: All right.

Q. Now – sorry.

A. I was going to say, as I noted in my report, I couldn't tell whether that was – that characterized this interview or not because there was no verbatim transcript. Now, I note that the witness said that she didn't use it in a non-suggestive fashion, but without a verbatim record there's no way to know for sure.

Q. Now, Dr. Yuille, I'm just about finished here, but I – I think I want to take you back to the previous statement you made about the interview of Jarvis, because I think you do recognize and I think, in fairness, we should point out there are some qualifications to that. That is, you are basing that on the transcripts you reviewed of the witness – I'm sorry, of the interviews. You were also made aware that there were a number of interviews of Mr. Jarvis conducted by the RCMP which were not transcribed.

A. Yes.

Q. And –

A. And, of course, whether there was influence there or not, I don't know."[387]

I refer to the following questions posed to Dr. Yuille:

"Q. ...And my question to you is what is the import of the presence of all of those surrounding verifiable factors pre his contact with Brenda Valiaho in terms of whether or not she might have done anything that could have created a false memory of this event.

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[387] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7465-7467

A. If the description provided during this session had no new features to it, that is, if the same or similar description had been supplied before the session, then whether the session was misleading or not is – becomes irrelevant.

Q. Yeah, it doesn't matter, does it?

A. It doesn't matter, no.

Q. Because she couldn't have done anything that would have affected what he'd already told people –

A. That's right.

Q. – and what we already know to be verified. So in many respects the concern about this in the context of this hearing and the assessment of his credibility is really a non-issue.

A. Well, I – I don't know about the credibility being a non-issue.

Q. Sorry.

A. But certainly the – the risk of contamination at the time of that interview becomes substantially reduced if that information had come out from Mr. Roy previously and there wasn't some substantial change that took place in his description during that session, then prima facie it's – it's not suggestible."[388]

Dr. Yuille was also questioned about Keith Jarvis' interviewing technique and the statement that Keith Jarvis took from Jason Roy in November of 1990:[389]

"Q. Dr. Yuille, you have also, I understand, reviewed the transcript of testimony from the police sergeant or retired police sergeant, Sergeant Jarvis, with respect to his practice in doing interviews as a police officer.

A. Yes.

Q. And you're aware that he identified his – his way of obtaining statements as a pure version, true version kind of statement technique.

A. Yes."[390]

A copy of Roy's handwritten statement of November 30, 1990, was put to Dr. Yuille:

"Q. ...would you agree that this is a very detailed narrative in the sense that he's giving people, places, lots of –

A. Yes. Times.

Q. – times. There's lots of just general information here that would be indicative of somebody having had – having a fairly good memory of the events that were being discussed if, in fact, any of this turns out to be verifiable.

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[388] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7476-7477.
[389] Handwritten Statement of Jason Roy dated November 30, 1990, Inquiry exhibit P-6.
[390] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7478.

A. Yes.

Q. And despite that obvious or apparent very clear and detailed memory, he suddenly says, you know, '…we stood there and we argued for what I don't know, and he turned around and said 'fuckin Jay' and I looked around and blacked out and woke up at Julie Binnings.' Would you agree with me that the suggestion from a person who has a very detailed memory, that all of a sudden he blacked out and he doesn't remember anything else is a bit odd, given the previous information provided?

A. I really don't know. It would depend so much on the circumstances, alcohol consumption, et cetera.

Q. Would you expect a police officer trained to take statements to at least question that sudden bold assertion that, 'Oh, I don't remember anything else because I blacked out.'

A. Yes. How do you know that that happened, yes.

Q. Yeah. For an experienced police officer trained in interviewing, the absence of any quizzing of him about that is really quite strange, isn't it?

A. It's not the best procedure."

"A. Yes. What – what is a bit unusual here is that there's information reported up to the point of blacking out. Usually alcohol has a steadily increasing disruptive effect. This is an issue, in fact, that I've looked at in my own research is the impact of alcohol and it's – it's permanent. A person can't recover from the memory loss that alcohol causes."[391]

Dr. Yuille was questioned further about the Roy statement of November 30, 1990:

"Q. … if details were left out that might be significant or use the words like "I think", again, are those factors that you would look at in trying to determine now ten years later whether, in fact, they have actual memory or false memory? Are those factors that you would have to look at?

A. The scenario you describe in general is one in which there is an omission of some relevant fact. Omissions are much more difficult to deal with than say contradictions. Someone can omit mentioning something for a variety of reasons, of course one of them is it didn't happen, but in addition to that it could be that it's too upsetting to talk about, that the right questions weren't asked, that – so when something is left out you need to try to determine why it was left out and not just assume that this immediately tells you there's a credibility issue.

A. Well, there are two possibilities, either it didn't happen, which is why it's omitted, or it's omitted for some other reason, and you mentioned because

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[391] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7480-7483

> it wasn't very – thought to be very important, but I'm sure there's a long list of possible reasons that someone would omit –"[392]

Counsel questioned him further on the interviewing technique followed by Sgt. Jarvis on November 30, 1990:

> "Q. And Sergeant Jarvis was looking to try to find who may have had last contact with Neil Stonechild whose frozen body had been found the day before he took that statement; is that what you understand?
>
> A. Yes.
>
> Q. Right. And in the course of it he was endeavoring to find out who may have seen him, and what circumstances and what conditions; is that your understanding?
>
> A. Yes.
>
> Q. And would that approach, then, be a proper approach for that kind of investigation?
>
> A. The problem I have with your question is that the manner in which the statement was obtained is not known to me. That is, the statement doesn't contain within it what questions were asked, for example, before the statement was written. Police officers vary in the way that they do this. Sometimes they'll actually get a verbal report first –
>
> Q. Sure.
>
> A. – by asking a series of questions, and then instruct the witness to now write down what they said. Others will just say write it down. I don't know which was done here.
>
> Q. I appreciate that, and if the – if the circumstance or the evidence was that it was made known that we're investigating and we'd like you to tell me as much as you could about the last day's activities and record it for me, would that have been an appropriate method to follow?
>
> A. Yes.
>
> Q. And if there had been contact with Mr. Roy before the officer showed up, a discussion on the telephone about the reason for the statement, would that have been an important factor at the front end?
>
> A. It would depend what was said.
>
> Q. Okay. You were asked questions, then, also about follow-up on the – he said he blacked out –
>
> A. Yes.
>
> Q. – didn't recall anything else, woke up at Julie Binnings.
>
> ...

---

[392] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7503 and 7506

> Q. Would an officer investigating a sudden death, trying to find out who last saw him naturally push beyond that or might he reasonably say that's the last memory?
>
> THE COMMISSIONER: Are you qualified to answer that?
>
> THE WITNESS: No, I was just going to say, I really, I don't have the knowledge base to know what police officers naturally do.
>
> Q. MR. STEVENSON: Sure.
>
> A. I would have done that, but that may be because I'm a psychologist.
>
> THE COMMISSIONER: You would have done what, Doctor?
>
> A. I would have asked about blacking out.
>
> THE COMMISSIONER: You would have?
>
> A. I would have."[393]

Dr. Yuille offered what he considered to be one of the predominant impediments to effective investigation:

> "A. In our own research as well as that of others, the biggest single impediment to effective investigation is when the Investigator has a single hypothesis about the fact pattern that he or she is dealing with, and that in contrast to that the most effective approach to investigation is the alternative hypothesis method, where the Investigator entertains several alternative explanations as the investigation unfolds. This way the Investigator is not blinded by this one hypothesis. When there's only one hypothesis there's a tendency to exaggerate the evidence that's consistent with it and minimize evidence that is inconsistent. So by keeping an open mind through multiple hypotheses reduces that problem.
>
> …
>
> A. It is human nature and it's also, I think, in fairness to a lot of police, it's a systemic problem with pressure to close files and solve cases, there's a lot of pressure to move quickly, within the system."[394]

Dr. Yuille was also asked many questions about the possibility that Keith Jarvis' memory had been influenced by suggestions. I refer to the following portions of the transcript:

> "Q. And then he goes on further, "He had not seen anything in the media concerning Stonechild." And then an interesting note. It says, "After considerable prompting he did recall an investigation." What is the – I mean do we – we don't know, obviously, what was said in the prompting.
>
> …
>
> Q. …it's noted by Constable Warner, "His recollection of those events was very sketchy.

---

[393] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7541-7545

[394] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7552-7553

...

Q. What are some of the potential problems with prompting?

A. Well, prompting is just fine as long as it doesn't lead or suggest. Prompting could be another term for cuing, providing the appropriate cues to help someone reconstruct an event."[395]

...

"A. Yes, but talking with them might have, in fact, provided cues that helped him to recall that. In and of itself, this is a neutral statement. It's not – doesn't identify contamination. It's just – it's a statement that he thought about this and he's remembered more.

Q. Okay. Does it identify confusion?

A. No.

Q. He's not sure of the source and that's not confusion?

A. I don't read this as – as not being sure of the source, but rather attributing his improved memory to several sources."[396]

...

"Q. And there's places in there where Mr. Martell says something like, 'We're talking death, and policemen being involved.' Are those kind of things designed typically for any purpose?

A. I believe that this interview took on the characteristics of an interrogation later on in the interview. And the answer is yes that sometimes techniques like that are used in the process of – of an interrogation.

Q. Sure. An interrogation is typically with a suspect, though, isn't it?

A. Yes.

Q. That's how we look at it.

A. Not only with a suspect. Techniques may be used with a witness for whom there's concern that they're not being honest or forthcoming."[397]

...

"Q. And the first interview that you are able to look at with the transcription, which I believe is P-107 in these proceedings, at page 8, Mr. Stevenson took you to the point where at the bottom of page 8 Mr. Jarvis basically says that he is not clear as to the source of his knowledge but he thinks it could be something that he recalls, could be something that you told me. But at the end of the day in that interview he does say that he believes he was told by Jason Roy that there was some contact between Neil Stonechild and SPS and some contact with Mr. Roy and SPS.

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[395] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7581-7583

[396] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7594-7595

[397] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004): 7607

THE COMMISSIONER: What's your question?

Q. My question is this, were you aware of what documents Mr. Jarvis reviewed just prior to this statement being given?

A. I'm aware that he reviewed his notes.

Q. Yes. And is that one of the things that you talked about early that could cue memory?

A. Yes.

Q. And would that be fairly significant for a police officer to review his notes just before an interview like this, and that he may start to recall things?

A. Yes.

Q. And is it possible that an officer may recall items that are not specifically referenced in his notes but other factors in his notes could trigger those memories?

A. Yes.

Q. Now the record shows in these proceedings that the only time that Mr. Jarvis in his contact with the RCMP said that he had some recollection of this contact that we've discussed involving Jason Roy, Neil Stonechild and SPS, was during this interview, P-107. And also on May 23rd, there's testimony in this proceeding, and again I can give the reference, it's page 4533 of the transcript, Mr. Hesje is examining Mr. Jarvis, and I go on to explore similar ground in page 5230 in these proceedings. I appreciate, Doctor, please forgive me, that you have not seen this information, but the evidence here is that Mr. Jarvis testifies that having reviewed it Jarvis confirmed Roy disclosed seeing Stonechild in the back of the police car. Now, again, the evidence in this proceeding is that Mr. Jarvis on the day that he said that to the RCMP reviewed the Saskatoon Police Service file, P-61 in these proceedings. Again, is that the type of cue that may trigger recall of memory, even though it may not specifically be recorded in those documents?

A. Yes.

Q. You mentioned that most training these days with respect to interviews is to try and develop techniques to avoid leading or suggestive questions, and I think that's commonsense, isn't it?

A. Yes.

Q. And does that type of approach work with interviewing witnesses who want to – who do not want to provide information, who are not being compliant, perhaps being evasive for some reason or another?

A. If someone's being evasive and not cooperative there's no secret technique to suddenly change them to become cooperative. Certainly becoming leading and suggestive doesn't solve that problem.

Q. Yes. But you may, if a person doesn't recall information, would you agree that – and I believe you have already, but please correct me if I'm wrong – that it may be appropriate for some prompting to take place, for pieces of information to be given?

A. Yes.

…

A. They're going to have to be cued.

Q. And that would be appropriate in such circumstances –

A. Yes.

…

Q. And if we look at Exhibit P-109 and I appreciate, Doctor, that we don't have a transcription of the RCMP questions being put to Mr. Jarvis. But if you do look at P-109 and the notes that are taken there, there's a good deal of concrete information there, is there not? If we look at that he states, he recalls Morality handled it, Bolton was there, a youth found with one shoe, he never attended the scene, he did not attend the postmortem. Again, there's a fair amount of detail there, is there not?

A. Yes."[398]

There was a great deal of discussion during the Inquiry about memory, the creation of memory, and the reliability of memory.

Predictably, most of the debate swirled around Jason Roy and his account of the events of November 24/25, 1990. There were a great many suggestions made in cross-examination that did not, with all due deference, accord with the evidence.

In the end, Dr. Yuille was able to put the issues surrounding memory, in a clear and comprehensible context. I found his evidence extremely helpful and refreshing in its forthrightness. I only wish others, characterized as "experts", had performed as well. His analysis of the memories recounted during the hearing helped me immeasurably in reaching the conclusions I have on the key elements of the testimony.

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[398] Evidence of Dr. John Yuille, Inquiry transcript, vol. 39 (March 12, 2004) 7622-7626

Overview of the Evidence

As I now turn to my analysis of the evidence, I must reiterate that the findings and conclusions I have reached cannot be taken as findings of criminal or civil responsibility. The rules of evidence and the procedures followed by the Inquiry are very different from those of civil and criminal courts. As a result, the findings of fact in an inquiry may not necessarily be the same as those that would be reached in a court.

1 | The Events of November 24/25, 1990

Much has been said and written about the death of Neil Stonechild. After sifting, literally, through thousands of pages of evidence and the many exhibits, a clear picture emerges as to the events of November and December 1990. In setting down my conclusions with respect to what happened during that period, I will necessarily make references to many parts of the evidence. My commentary will include those portions of the evidence which may be viewed as contradictory. I acknowledge that, in the final analysis, no one can ever know with precision, other than Neil Stonechild and Cst. Hartwig and Cst. Senger, what happened on the night of November 24/25. I say Cst. Hartwig and Cst. Senger because whatever other conclusion one may draw, there is no question that Stonechild was last observed in the custody of those two officers, and that he was later found in a vacant field near the Hitachi plant on 57th Street with injuries and marks that were likely caused by handcuffs.

What then are the essential facts? On the afternoon of November 24th, 1990, Stonechild and Roy visited a friend on the east side of Saskatoon.[399] They then took the transit bus to the west end and the area of Confederation Park, in particular. Stonechild and Roy encountered Stonechild's former girlfriend, Lucille Horse (nee Neetz) on the bus.[400] The boys learned from their conversation with Horse and her companion, Gary Horse, that the couple were babysitting for her sister, Claudine Neetz, and her boyfriend, Trent Ewart, in an apartment at Snowberry Downs on the west end of Saskatoon. Snowberry Downs is comprised of three apartment buildings. These apartments are located on the corner of 33rd Street West to the south and Wedge Road to the east. Appendix "K" to this Report contains a map of the area which indicates the location of Snowberry Downs and its close proximity to Confederation Drive.

Ms. Horse was unwilling to tell Stonechild the specific location of her sister's apartment as she expected her former boyfriend might cause some trouble. Ms. Horse knew that Stonechild was going out drinking that evening, and she also knew that Stonechild had a history of alcohol abuse and fighting while under the influence.[401]

Stonechild and Roy ultimately arrived at the Stonechild residence in the afternoon of November 24. There the boys decided they would obtain some alcohol and go to the home of Doris Binning, expecting to party with the Binnings and their friends. Before leaving the Stonechild residence, he promised his mother that, after the weekend, he would return to the community home from which he was absent without leave. Later in the evening, he phoned the community home manager and repeated this promise to her.

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[399] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 350

[400] Evidence of Lucille Horse, Inquiry transcript, vol. 5 (September 15, 2003):885-886

[401] Evidence of Lucille Horse, Inquiry transcript, vol. 6 (September 16, 2003): 886, 943

Neil persuaded his older brother Marcel to purchase a bottle of Silent Sam vodka for him. With their purchase in hand, the boys walked to Binning's residence, a short distance away. Appendix "K" to this Report shows the location of the Binning and Stonechild residences.

It was an extremely cold night. The temperatures for the night of November 24/25th were recorded at the Environment Canada Office at the Saskatoon International Airport. In the late evening hours of November 24 and the early morning hours of November 25 the temperature fell to minus 28.1 degrees Celsius.

Neil Stonechild was dressed in a white T-shirt, a wool lumberjack jacket, and a leather and fabric baseball style, or what has been referred to as a bomber style, jacket. He wore blue jeans, briefs, spandex pants, cotton socks, and running shoes. He was also likely wearing his trademark baseball cap. It does not appear that he was wearing gloves.[402]

At the Binnings, Roy and Stonechild visited with Julie Binning and Flora Binning. Eddie Rushton was present. Rushton, now deceased, was a friend of Stonechild and was involved in the August 1990 incident with Gary Pratt. Cheryl Antoine was also present at the Binning home. At the time she was Roy's girlfriend and was pregnant with his child. The boys drank virtually all of the vodka.[403] There was some debate as to whether the bottle contained 26 ounces or 40 ounces of vodka. It appears likely that it was 40 ounces. Roy stated that 7 or 8 ounces were left in the bottle when he and Stonechild left the Binnings.[404] Neil had advised Roy that he wanted to see Lucille Horse at Snowberry Downs, and Jason agreed to accompany him. Around 11:00 p.m., they left the Binning residence.[405]

They stopped at a 7-11 confectionery at the corner of 33rd Street West and Confederation Drive to warm up.[406] They then proceeded to Snowberry Downs.

The evidence of Bruce Genaille indicates that Stonechild likely caused a disturbance at the 7-11.[407] Genaille testified that he was stopped by two officers who told him that they were looking for Stonechild in connection with a disturbance at 7-11. The evidence establishes that Cst. Hartwig and Cst. Senger were the officers who stopped Genaille. They checked Genaille's identification and eventually let him proceed on his way.

Meanwhile, Roy and Stonechild had made their way to Snowberry Downs. They went from apartment building to apartment building in search of Lucille Horse. Access to the apartment buildings was controlled by an automatic entry system which allowed a visitor to buzz a resident who could in turn allow the visitor to enter. They pushed buzzers at each building and asked for Ms. Horse without any success.

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[402] Evidence of Stella Bignell, Inquiry transcript, vol. 1 (September 8, 2003): 70;
Evidence of Debra Mason, Inquiry transcript, vol. 1 (September 8, 2003): 131-137;
Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 575;
Evidence of Lucille Horse, Inquiry transcript, vol. 5 (September 15, 2003): 895, and
Evidence of Flora Binning, Inquiry transcript, vol. 8 (September 18, 2003): 1445

[403] Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 581-584

[404] Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 443; and
Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 613

[405] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 353

[406] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 354-357

[407] Evidence of Bruce Genaille, Inquiry transcript, vol. 12 (September 25, 2003): 2276-2302

As time passed, Jason became impatient with the search. He told his friend he was leaving.[408] Neil flew into a rage. He cursed Roy repeatedly. Roy described his last sighting of Stonechild when he observed his friend turn the corner at one of the apartment buildings.[409] After Roy's departure, Stonechild continued his search alone. Roy testified that up until the time he left Snowberry Downs, Stonechild did not have any injuries on his face.[410] Roy returned to the 7-Eleven to warm up.

Stonechild ultimately gained access to one of the buildings. This building, by chance, was the building where the Horses were babysitting. He banged on the doors of the individual apartments. As he proceeded down the hall, his noisy progress came to the attention of the Horses and Trent Ewart. Ewart had arrived shortly before Stonechild's appearance.[411] Ultimately he arrived at Ewart's door.

Lucille Horse peered through the peep hole of the door and recognized Stonechild.[412] Ewart told Stonechild to leave and threatened to call the Saskatoon Police Service. Ultimately he did so, identifying Stonechild and indicating that the latter was drunk and causing a disturbance.[413] Stonechild mumbled an apology and left.[414] He was not seen again by any of the occupants of the apartment.

Trent Ewart's telephone complaint was received by the Saskatoon Police Service at 11:49 p.m. on November 24, 1990.[415] The Saskatoon Police Service Communications Centre dispatched a police cruiser in the vicinity to proceed to Snowberry Downs and address the call. The cruiser was car 38 and the occupants were Cst. Bradley Senger (Badge #80) and Cst. Lawrence Hartwig (Badge #332). The constables acknowledged the call at 11:51 p.m. reporting that they were en route.[416]

A number of key events took place within the next hour. Their sequence is critical to the findings I make in this Inquiry. The evidence established that Cst. Hartwig and Cst. Senger proceeded to search for Stonechild. I conclude that shortly after 11:51 p.m. the two officers came on Neil Stonechild. He was drunk and probably belligerent and uncooperative. The Constables took him into custody. The cruiser proceeded a short distance down a lane to Confederation Drive. As the car exited the lane, the police intercepted Jason Roy.[417] Roy observed Stonechild in the rear of the cruiser. When asked if he knew the prisoner, he denied that he did. Roy testified his friend was cursing him and calling for help and telling Roy to tell the police who he was. Roy gave the police the name of his cousin, Tracy Lee Horse and his birth date. CPIC records confirm that Cst. Senger conducted a CPIC query of the name "Tracy Lee Horse" at 11:56 p.m.[418] Roy was released.

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[408] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 358; and Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 454

[409] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 359

[410] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 371

[411] Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1292

[412] Evidence of Lucille Horse, Inquiry transcript, vol. 5 (September 15, 2003): 887

[413] SPS Dispatch Record, exhibit P-67

[414] November 30, 1990 Statement of Trent Ewart, exhibit P-34

[415] SPS Dispatch Record, Inquiry exhibit P-67

[416] SPS Dispatch Record, Inquiry exhibit P-67

[417] Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 360

[418] CPIC Summary, Inquiry exhibit P-88

A CPIC query of the name "Neil Stonechild" was made some minutes later (11:59 p.m.).[419] CPIC records also indicate that Cst. Hartwig conducted a CPIC query of the name "Bruce Genaille" at 12:04 a.m. There is then no further record of searches or activities by Cst. Hartwig and Cst. Senger for some 12 minutes. At 12:17 a.m., the officers reported Stonechild GOA (gone on arrival) and cleared the call.[420] They were then dispatched at 12:18 a.m. to investigate a suspicious person looking into garages on O'Regan Crescent. While O'Regan Crescent is only about a block away from Snowberry Downs, approximately six minutes elapsed before the officers indicated on their MDT that they were at the scene (12:24 a.m.). The officers cleared the O'Regan dispatch within 3 minutes of arriving at the scene (12:27 a.m.), indicating GOA on their MDT. Curiously, Cst. Senger conducted a CPIC query of Trent Ewart at 12:30 a.m.; long after the officers cleared the Ewart complaint.

Thus, the time between the Horse CPIC and the clearance of the Ewart complaint was 21 minutes. It took an additional 6 minutes for the officers to arrive at O'Regan Crescent, the scene of the next dispatched complaint. What happened in this 27 minute interval? Where were Hartwig and Senger and what were they doing?

I am satisfied that Cst. Hartwig and Cst. Senger had adequate time between the Snowberry Downs dispatch and O'Regan Crescent dispatch to transport Stonechild to the northwest industrial area of Saskatoon.

I am also satisfied that Stonechild died in the early morning hours of November 25, 1990, as a result of cold exposure. The evidence establishes that Stonechild was not seen alive or heard from after the night of November 24/25, 1990. Further, Dr. Adolph, the Pathologist, stated that the time of death could have been as early as November 25, 1990.

Counsels' Submissions

Counsel for the officers and the other police parties at the Inquiry offered a number of submissions as to why Stonechild could not have been in the custody of Cst. Hartwig and Cst. Senger on November 24/25, 1990. The following are the principal arguments that were advanced.

It was submitted by Counsel for the two Constables, and for the other Saskatoon Police Service parties, that Roy's evidence could not be trusted in light of the inconsistencies and contradictions in his testimony. There were a number of errors and inconsistencies in Roy's evidence, but, as I have noted, most can be explained by the disorientating lifestyle he was leading at the time. However, as I stated in my review of the evidence, I have found that the core of Roy's testimony—that he was stopped by the police on November 24/25, 1990, and that he observed Stonechild in the back of a police car—to be credible and corroborated by other evidence. Further, Roy's evidence of his encounter with the officers stands uncontradicted by the evidence of Cst. Hartwig and Cst. Senger who maintained throughout their testimony that they had no recollection of stopping Roy and no memory of the 25-plus minutes they spent on a dispatch call involving Stonechild on November 24/25, 1990, notwithstanding the fact that Stonechild turned up dead on November 29, 1990.

It was also submitted that the CPIC query of Stonechild at 11:59 p.m. in fact provides evidence that Stonechild was not in the officers' custody. The argument made was that since Cst. Senger did not include Stonechild's date of birth in the query, but rather inputted "18" in the age field, Stonechild must not have been in their custody. If he had been in their custody, at that time, it was said that they would have obtained a date of birth and entered that in the CPIC query. However, as other counsel pointed out in their submissions, the absence of a date of birth in a CPIC query could be the result of an uncooperative prisoner who refused to answer questions.

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[419] CPIC Summary, Inquiry exhibit P-88

[420] SPS Dispatch Record, Inquiry exhibit P-67

It was also submitted that Roy's evidence must be rejected because it would have been impossible for Cst. Hartwig and Cst. Senger to have arrested Stonechild by the time they stopped Roy. It was argued that the interval between 11:51 p.m. (the time the officers indicated that they were en route) and 11:56 p.m. (the time they stopped Roy) did not afford the officers enough time to arrive at Snowberry Downs, meet with Trent Ewart, find Stonechild, arrest Stonechild, and then proceed to Confederation Drive where they encountered Roy.

This argument obviously depends upon the assumption that the officers apprehended Stonechild after a search of Snowberry Downs and after meeting Trent Ewart. This assumption is not founded on the evidence. The evidence suggests that Stonechild fled the Ewart apartment after Ewart threatened to call the police. It is therefore far more likely that the officers would have encountered Stonechild outside of Ewart's apartment building either on or near the Snowberry Downs complex. The evidence is not clear whether or not the officers even spoke with Trent Ewart at all that evening. His written statement given to Sgt. Jarvis on November 30, 1990, suggests that he did speak with the police, but he denied such contact when he testified. Cst. Hartwig and Cst. Senger neither recalled nor recorded any contact with Ewart.

Counsel for the officers also submitted that Stonechild could not have been in the custody of Cst. Hartwig and Cst. Senger, because Bruce Genaille did not observe anyone in the back of the cruiser when he was stopped by the officers. This submission is based upon the assumption that Genaille was stopped by Cst. Hartwig and Cst. Senger at 12:04 a.m. on November 25, 1990, which was the time they conducted the CPIC query of Bruce Genaille. The evidence, however, indicates that this is an assumption that cannot be sustained. I point to the fact that Cst. Senger conducted a CPIC query of Trent Ewart at 12:30 a.m., long after they had cleared the call. Cst. Hartwig suggested that this after-the-fact CPIC query was conducted for "intelligence purposes". As I have indicated above, in the case of the Genaille CPIC query, Genaille's testimony established he was stopped by the officers prior to the Ewart complaint. His uncontradicted evidence was that the officers questioned him about a disturbance at 7-11 and not Snowberry Downs. As I have noted, Genaille would have certainly remembered a reference to Snowberry Downs, as he lived in that apartment complex at the time. Further, Genaille testified that he was not aware of any disturbance at Snowberry Downs prior to departure for the evening. I can only conclude from this evidence that Cst. Hartwig and Cst. Senger stopped Genaille prior to receiving the Ewart complaint. Why would Cst. Hartwig conduct a CPIC query of Genaille at 12:04 a.m.? Perhaps it was for "intelligence purposes". Perhaps they were not sure that the individual in their custody was indeed Neil Stonechild, and they were considering tracking down Genaille to identify him. There could be any number of reasons.

I would like to address one final argument made by Counsel for Cst. Hartwig. Counsel submitted that the officers must not have had Stonechild in their custody on November 24/25, 1990, because if they had, they would have delivered him to a detention centre. Counsel submitted that the officers had no motive to do anything else. This Inquiry heard evidence of other situations where SPS officers decided to transport prisoners to remote locations rather than a recognized detention facility. One of these officers testified as to his motives:

> "THE COMMISSIONER: Why did you do it?
>
> Q. MS. KNOX: Yes, why?
>
> A. I've thought about that for a long time. I don't know. It seemed like a good idea at the time.
>
> Q. Good idea in what context, sir?
>
> A. What I can recall of the incident, the person was dealt with several times during my shift in which he was making a nuisance of himself at a hospital, as a matter of fact, and he was requesting a ride home. The hospital, of course, would not pursue any charges for his actions and it was a case of him requesting a ride home every night.
>
> Q. So as a result of his requesting a ride home from the hospital and your being repeatedly called to the hospital, is that what you're saying?
>
> A. Yes.
>
> Q. You dealt with him in the manner that you did?
>
> A. Yes."[421]

Ultimately, the evidence did not establish what was going through the minds of Cst. Hartwig and Cst. Senger on November 24/25, 1990. The evidence did, however, establish on the balance of probabilities: a) that Neil Stonechild was last seen in their custody at approximately 11:56 p.m. on November 24, 1990; b) that he died of cold exposure in a remote industrial area in the early hours of November 25, 1990; and c) that there were injuries and marks on his body that were consistent with handcuffs.

2 | The Discovery and Identification of the Body of Neil Stonechild

On November 29, 1990, Richard Harms and Bruce Meyers were constructing a fence on property adjoining the Hitachi plant on 58th Street. They noticed a body lying in the snow covered field to the north of their location.

The Saskatoon Police Service was called at 12:52 p.m. Cst. Rene Lagimodiere, now a Sergeant, was dispatched to the scene and arrived at 12:58. He carried out a preliminary investigation. The police noted when the body was turned over, that the sleeves of the deceased's jacket were pulled down over his hands, obviously to keep him warm. They also observed that the deceased's right running shoe was missing and that the wool sock on the right foot was so worn in the heel area that the skin was exposed and discolored by dirt or gravel.

Lagimodiere was able to identify footprints made by the deceased and followed them back to a gravel parking lot off 57th Street. On cross-examination, Lagimodiere indicated that he formed the opinion that the deceased had been intoxicated and was stumbling around in the field. Later he acknowledged that the course of the footprints from the south were relatively straight.

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[421] Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3297-3298.

Lagimodiere then took steps to secure the scene and called for an Identification Officer, the Coroner, and the Canine Unit to attend the scene. Lagimodiere did not call an Investigator to the scene as that was the responsibility of the Patrol Sergeant. However he did testify that there was no reason to call an Investigator, because there were no obvious signs of foul play. Lagimodiere did acknowledge that he wondered how Stonechild got there and that locating the body was an "unusual situation and an unusual location".[422] Lagimodiere also acknowledged in cross-examination that it could have been foul play as he did not know how the deceased got there.[423]

Dr. Brian Fern, the Coroner, arrived at the scene shortly before 2:00 p.m. He examined the body and the scene but did not record any of his observations. Dr. Fern indicated that he believed the body had been there for several days. Morton's report records Fern noted injuries on the deceased face that Fern thought could have been caused by falling face down onto the ground. Morton reported that the body was examined as well as possible, given its frozen state, for signs of foul play. Morton reported that none were found.

MD Ambulance Service removed the body to the morgue at St. Paul's Hospital. Cst. Gregory Robert and his service dog conducted the search of the field. The dog did not locate anything.

In his report, Lagimodiere described Stonechild's clothing and observed that the footprints appear to be "several days old". He also testified he felt the body had been there for several days.

Inexplicably, no search was conducted by the police of 57th Street or the lot adjoining the Hitachi plant. The lot had a gravel surface. It was never searched. No physical search was made in the field for the shoe.

Another piece of evidence struck me as surprising. Michael Petty was the Patrol Sergeant responsible for the area in which the body was found. The evidence of other past and present police members satisfies me that it was his duty to ensure that an Investigator from the Morality or Major Crimes Units attended the scene. While Petty speculated that an Investigator was likely called, an Investigator did not attend. This fact did not trouble Petty, as he was of the view that there was no indication of foul play. Given the highly unusual, if not suspicious circumstances, I cannot understand how Petty could have treated this matter so casually.

After Lagimodiere's incident report was submitted, the investigation of the matter was assigned to the Morality Unit. The evidence satisfies me that the file should have been immediately assigned to the Major Crimes Unit, which was responsible for investigating suspicious deaths. The Morality Unit was responsible to conduct follow-up investigation of non-suspicious deaths. The decision to send it to Morality may have been influenced by Lagimodiere's report that there were no obvious signs of foul play. In as much as the officers who attended the scene were not able to determine why Stonechild was in this remote industrial area, the death ought to have been treated as suspicious. Indeed, as discussed, an attempt was made by the Morality Investigator to transfer the file to Major Crimes on November 30, 1990. Inexplicably, this attempt was unsuccessful.

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[422] Evidence of Rene Lagimodiere, Inquiry transcript, vol. 11 (September 24, 2003): 1928

[423] Evidence of Rene Lagimodiere, Inquiry transcript, vol. 11 (September 24, 2003): 1934

The Staff Sergeant in charge of the Morality Unit on the evening of November 29th, 1990, was S/Sgt. Theodore Johnson. Johnson assigned Keith Jarvis, one of his senior investigators, to conduct the Stonechild investigation. He and Sgt. Morton went to the morgue at St. Paul's Hospital at 8:10 p.m. Jarvis did not examine the body nor did he examine Stonechild's clothing. Morton took a fingerprint off the body and confirmed that the deceased was Neil Stonechild.

For the most part, the officers that attended the scene of Neil Stonechild's death performed their duties adequately. The fact that an Investigator did not attend the scene, and that the investigation was handed over the Morality Unit and not Major Crimes, causes me concern, but these shortcomings are dwarfed by the inadequacies of the investigation that followed.

3 | The Investigation of the Death of Neil Stonechild, November 29, 1990 – December 5, 1990

The investigation was superficial at best and was concluded prematurely. By the conclusion of the hearings, no party, with the possible exception of Keith Jarvis, was seriously contending otherwise. The Saskatoon Police Service acknowledged the serious deficiencies in the investigation.

The investigation was assigned to Sgt. Jarvis around 7:00 p.m. on November 29, 1990. The investigation on that day consisted of identifying the deceased, notifying the next-of-kin, and contacting Pat Pickard, the operator of the group home where Stonechild had been in open custody.

The following day, November 30, 1990, Jarvis interviewed six people, mostly by telephone. He took written statements from only two: Ewart and Roy. He received information from a Crime Stoppers tip and Sgt. Neil Willie pointing to the possible involvement of Gary and Danny Pratt. He checked dispatch records and learned that Cst. Hartwig and Cst. Senger had been dispatched in response to a complaint regarding Neil Stonechild late on November 24, 1990. At the end of the day, he had filed an Investigative Report recommending that the file be transferred to Major Crimes.

Jarvis's next day on duty was December 5, 1990. He resumed the investigation. On that date, he interviewed two people, one by telephone. He made some minimal unsuccessful attempts to contact Gary Pratt and Eddie Rushton. He spoke to the Pathologist, Dr. Adolph. He concluded his investigation by filing his Investigation Report at approximately 4:30 p.m. As noted elsewhere, there was no evidence that any further investigation was conducted until the RCMP task force became involved in 2000.

A consideration of what was not done is even more revealing as to the nature of the investigation. Jarvis never attended the death scene. While he was assigned the file after the body had been removed, it is reasonable to expect that he would at least drive by the location. Even more surprising, he did not look at the photos and video of the scene taken by the Identification Officer. He never examined Stonechild's body at the morgue. He never looked at the autopsy photographs taken by the Identification Officer. One must ask, parenthetically, what is the purpose of having identification officers gather evidence of this sort if the investigating officer ignores it?

Jarvis's failure to inspect the body or look at the photographs is not insignificant. Jarvis was asked about the marks on Neil Stonechild's wrists, marks which were the subject of much debate during the inquiry. He was shown one of the post-mortem photographs of Stonechild's wrist.[424] He was asked what impact the photo of Stonechild's wrist would have had on him in 1990 if he had taken the time to look at the photograph:

> "Question: And had you seen that photograph in 1990 when you were conducting the investigation, would it have had any impact on how you conducted the investigation?
>
> Answer: Certainly.
>
> Question: In what way?
>
> Answer: I would have had to have looked closer to see if this individual was actually in custody at any given time."[425]

He never attended the autopsy and never read the autopsy report. He never read the toxicology report.

Jarvis did not examine Stonechild's clothing or request that it be sent to the crime lab for analysis.

Aside from a brief conversation with Shannon Knight, one of the Binning guests, Jarvis never interviewed any of the people who were present at the Binning residence as to what transpired the evening of November 24, 1990. If he had interviewed Julie Binning and Cheryl Antoine or either one of them, he would have learned immediately of Roy's statements to them about Neil Stonechild being in police custody.

Jarvis made no serious attempt to contact Eddie Rushton, notwithstanding he had been told that Stonechild was in his company on the night he disappeared. Even more surprisingly, Jarvis made no serious attempt to contact Gary Pratt. As I have noted elsewhere, there was no credible evidence to support any involvement of Gary Pratt in the death of Neil Stonechild. However, this was not known to Jarvis at the time of his investigation. Jarvis had received information from several sources suggesting Pratt's involvement. This information was summarily dismissed without any investigation. Although Jarvis claimed to have made several attempts to locate Pratt, only one is recorded. There is also evidence that he could have enlisted the assistance of the Patrol Division in locating Pratt. It was not unusual to advise the patrol officers, at parade, to be on the lookout for a certain person. This was not done.

Jarvis made no record of the contact he maintains he had with Cst. Hartwig and Cst. Senger. There is no record as to what, if any, information he received from them. He made no record of receiving information from Jason Roy, as I have concluded he did, that Stonechild was in police custody on the evening of November 24, 1990.

As I have already observed, the deficiencies in the investigation go beyond incompetence or neglect. They were inexcusable. Jarvis was clearly not interested in pursuing the investigation.

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[424] Post-Mortem Photograph 42, Inquiry exhibit P-28 reproduced in Appendix "P"

[425] Evidence of Keith Jarvis, Inquiry transcript, vol. 23 (October 22, 2003): 4519

On November 30, 1990, he indicates there is a possibility of foul play and recommends the investigation be transferred to Major Crimes. When the file is not transferred, he summarily concludes the file on December 5, 1990. The only new information he received on that day was a verbal report from Dr. Adolph on the results of the autopsy. In any event, it simply does not make sense that any suspicions of foul play or necessity for further investigation by Major Crimes, are dispelled by the verbal report of Dr. Adolph. What is the point of recommending the file be transferred to Major Crimes if all that he was waiting for was the result of the autopsy report? If he was expecting the body to yield the answers as to how Neil Stonechild came to die, why would he not have inspected the body or even looked at the photographs?

The only reasonable inference that can be drawn is that Jarvis was not prepared to pursue the investigation because he was either aware of police involvement or suspected police involvement.

4 | Missed Opportunities – December 1990 – March 1991

The concern I have about the obvious inadequacies in the investigation of Stonechild's death is compounded by the fact that a number of opportunities to correct the situation came and went.

Investigation File Supervision

There were checks and balances in place in 1990 to ensure that an investigation file was properly conducted and not prematurely closed. After a detective's Investigation Report was transcribed by Central Records, it was forwarded by the Reader to the Staff Sergeant in charge of the investigative unit. It was the Staff Sergeant's role to review the reports to confirm that the file was being adequately investigated. Further, an investigation file could not be concluded unless the Staff Sergeant approved its closure.

There is very little evidence in regard to the supervision of the Stonechild investigation. The Staff Sergeant who was in charge of supervising the Stonechild investigation could not recall the file. There is also no indication in the Investigation file as to what, if any, supervisory role he played. The file simply states that he assigned the file to Jarvis, and that he approved the closure of the file. There is, for instance, no evidence that there were any discussions or steps taken to respond to Jarvis' recommendation in his November 30, 1990 Investigation Report that the file be turned over to Major Crimes. There is also no evidence of what, if any, discussions or review occurred when Jarvis recommended in his next Investigation Report of December 5, 1990, that the file be closed. In light of the glaring deficiencies in the investigation, which were confirmed by most if not all of the police witnesses who took the time to review the entire file,[426] the only conclusion to be drawn is that the inadequacies would have been identified and remedied before the file was closed if the file had been properly supervised.

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[426] This list includes former Chief Penkala, Deputy Chief Wiks, former Chief Dave Scott, and S/Sgt. Murray Zoorkan

Internal Complaints within the Saskatoon Police Service

Shortly after the file was closed, members of the Saskatoon Police Service came forward with concerns about the sufficiency of the investigation. Cst. Louttit approached his own Staff Sergeant, who in turn, sent Louttit to meet with the Staff Sergeant in charge of Major Crimes, Bruce Bolton. He was told by S/Sgt. Bolton that he would have to deal directly with Sgt. Jarvis. Sgt. Jarvis dismissed Louttit's concerns indicating that the matter "was in hand", and that Louttit should leave it alone.

Sgt. Jarvis was also approached by Sgt. Eli Tarrasoff. Tarrasoff reviewed the investigation file after it was closed and was of the view that it was not properly investigated. Tarrasoff met with Jarvis and expressed the view that the investigation could have been done in more depth. Tarrasoff recalled that Jarvis was rather flippant about the matter, responding: "The kid went out, got drunk, went for a walk and froze to death." Unfortunately, as a result of unrelated difficulties in Tarrasoff's personal life, he did not pursue the matter.

The complaints of these members of the Saskatoon Police Service provided the Service with another opportunity to correct the problems with the investigation within a relatively short period after the file was closed. This opportunity too was squandered. The evidence suggests that in 1990, a suitable policy or practice to ensure that internal complaints were fully addressed was either not in place or not observed. The problem with simply referring the complainant or complaint to the officer who is the subject of the criticism is obvious. Such a practice is bound to discourage internal complaints.

External Complaints in the Press

On March 4, 1991, the cover story in the StarPhoenix was "Family Suspects Foul Play". The article was based upon interviews that the reporter, Terry Craig, had with the Stonechild family and with the Saskatoon Police Service media relations officer, Sgt. Dave Scott. The article expressed the family's concern that the matter had not been fully investigated and the family's suspicion that racism may have been a factor in the premature closure of the file.

Terry Craig quoted the response of Dave Scott to these very serious allegations:

> "I don't agree. A tremendous amount of work went into that case" he says.
>
> Pointing to a hefty file, Scott says investigators pursued every avenue. The coroner's report said no evidence showed Stonechild who was 17, was beaten before his death."[427]

Scott testified that he would not have reviewed the Stonechild investigation file prior to the interview with Terry Craig. He likely sought information from the Investigator or from the Staff Sergeant in charge of file. Scott did review the file prior to his testimony, and at that point he recognized that the file had not been satisfactorily investigated. While the evidence does not establish that there was intent to deceive, nevertheless, the public was misled by Scott's remarks.

The missed opportunity in this instance goes beyond the fact that the media relations officer failed to identify that the investigation was incomplete. An article on the cover of Saskatoon's only newspaper suggesting racism on the part of Saskatoon Police Service members was a clear signal to the chain of command at the Saskatoon Police Service that the matter ought to be revisited. This obvious conclusion is confirmed by the testimony of Joe Penkala, the Chief at the time. Penkala did not recall reading the article, but he testified what he would have done had he been advised about the article:

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[427] StarPhoenix report dated March 4, 1991, Inquiry exhibit P-1

> "A. ...I would have immediately followed this up with my -- with my deputy chief of operations and I'd have instructed that the entire incident had to be reviewed and that review would have to be brought to my attention and to be carried out and it would have to satisfy me before it could be dropped.
>
> Q. So you would have asked one of your senior officers to actually review the investigative file?
>
> A. Absolutely.
>
> Q. And report back to you.
>
> A. Absolutely.
>
> Q. And if you had any concerns you would have directed some further investigation or further steps to be taken.
>
> A. Yes."[428]

Penkala's notes indicate that he was working in March of 1991, but he was approaching retirement and had relegated much of his responsibilities to his executive officers. The Inquiry heard from a number of these executive officers. None of them recalled the March 1991 article or the Stonechild investigation itself. There is no evidence that any senior officer in the Saskatoon Police Service took any steps to inquire into the concerns expressed through the media.

In the period between December 1990 and March 1991, the Saskatoon Police Service had several chances to address the inadequacies of the investigation into Stonechild's death. The problems with the investigation should have been caught by the file supervision system. The internal complaints about the investigation should have been followed up. Finally, the article on the cover of the StarPhoenix in March of 1991 should not have been ignored by the chain of command. In spite of these opportunities, the Saskatoon Police Service did not act, and the investigation remained closed for a decade.

The next article published in the StarPhoenix about the death of Neil Stonechild in February of 2000 would result in the reopening of the investigation, but not by the Saskatoon Police Service. It was the RCMP that ultimately seized the opportunity to correct an injustice that had been permitted to endure for a decade.

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[428] Evidence of Joe Penkala, Inquiry transcript, vol. 19 (October 15, 2003): 3722-3723

5 | Sudden Death of Neil Stonechild Revisited – February 2000

The Media

In February of 2000, the RCMP was asked by the Attorney-General for Saskatchewan to investigate the freezing deaths of Rodney Naistus and Lawrence Wegner, and the allegations of Darrell Night that he had been dropped off by members of the Saskatoon Police Service. This investigation was named Project Ferric. The initial mandate of the RCMP did not include investigating the death of Neil Stonechild. However, on February 22, 2000, the Saskatoon StarPhoenix published an article about the suspicious circumstances surrounding the death of Neil Stonechild. In this article, Stella Bignell expressed her continuing frustration and distress about her son's death and the failure of the Saskatoon Police Service to follow up on its investigation. The article also contained reference to Jason Roy's account of the evening that Stonechild disappeared. Shortly after learning of this article, the RCMP determined that the death of Neil Stonechild fit within the mandate of Project Ferric.

The Stonechild family and Jason Roy placed trust in the media by confiding to the media their concerns about Neil Stonechild's death and the Saskatoon Police Service. This trust was rewarded. It is interesting to contrast this with the view of the media that was expressed in the minutes of the Saskatoon Police Service Issue Team meetings:

> "Can we be respectful of the process but not respectful of the media? Eg. If the media distorts the truth. Don't get into an argument with them. It's their job to cause alarm and a lot of what is stated the general public are able to see through this. The media's job is to sell newspapers. People trust less what they see and hear in the media."[429]

Canadians have an ambivalent relationship with the members of the media. At times we are, individually, and collectively, critical of what we perceive to be unfairness, bias and excessive zeal. There is some merit to those criticisms.

There are, however, many other instances when journalists and reporters render enormous service to this country and its parts. Politicians, bureaucrats, business people, members of the justice system and others are made accountable every day for inappropriate or dishonest conduct.

When we shake our heads over the excesses we should be reminded of the words of the Supreme Court of Canada in *Re Alberta Press Case*:

> "Democracy cannot be maintained without its foundation: free public opinion and free discussion throughout the nation of all matters affecting the State within the limits set by the criminal code and the common law."[430]

It is for this reason that freedom of the press was enshrined in s. 2(b) of the *Constitution Act, 1982*:

> "2. Everyone has the following fundamental freedoms:

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[429] Minutes of Issue Team Meeting of July 22, 2003, Inquiry exhibit P-196

[430] [1938] S.C.R. 100 at 146

> (a) freedom of conscience and religion
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other means of communication.
>
> (c) freedom of peaceful assembly; and
>
> (d) freedom of association."

Police agencies are granted extraordinary powers by the State, and it is especially important that these agencies be open and accessible to public scrutiny.

There is no doubt that if the Saskatoon StarPhoenix had not taken the initiatives it did in March 1991, February 2000, and later, to draw attention to the conduct of the Neil Stonechild investigation, there would have been no further action taken. The March 4, 1991, and the February 22, 2000, articles are reproduced in Appendix "S" because of the importance they played and because they brought to the attention of the community, and particularly the RCMP, circumstances that demanded a thorough inquiry. Notwithstanding the best efforts of the newspaper's reporters in March of 1991, it took even more prodding to get matters started. We owe a debt to the publishers and journalists of our daily newspaper. The CBC also drew attention to the same matter in a more limited way, as did a reporter for the Washington Post.

The RCMP Investigation

The mandate of the Inquiry did not include, nor should it have included, a review of the RCMP investigation into the death of Neil Stonechild. Nevertheless, a great deal of evidence was heard that detailed the investigative steps taken by the RCMP, and the majority of the Inquiry exhibits came from the RCMP investigation file that was disclosed to the Commission in the spring of 2003. In light of this, I feel compelled to make the following observations about the work of the RCMP.

The investigation, which began in February of 2000, was carried out over a period of 2½ years. The RCMP interviewed approximately 200 witnesses and retained experts to assist in the investigation, such as Dr. Graeme Dowling, a Forensic Pathologist and the Chief Medical Examiner for Alberta, and Gary Robertson, the Photogrammetrist hired to measure the marks that were apparent in the post-mortem photographs of Stonechild's body and, later, to compare these measurements to the measurements of handcuffs used by Saskatoon Police Service in 1990. It was the RCMP that identified the evidence that tied Cst. Hartwig and Cst. Senger to Neil Stonechild.

The evidence indicates that the RCMP investigation was carried out in a professional and even-handed fashion. When Project Ferric was initiated, both the RCMP and the Saskatoon Police Service were cognizant that some might be concerned about collusion between the two police forces in respect of the RCMP investigation, and steps were taken to address this concern. The evidence I heard on this point has convinced me that no collusion occurred. The evidence satisfies me that the RCMP followed every reasonable avenue of investigation, including the possibility that someone other than the Saskatoon Police Service was responsible for the death of Neil Stonechild. The RCMP investigators were also quick to follow-up on new information that surfaced during the Inquiry, and to supply Commission Counsel and the other Counsel with the results of their follow-up investigation. Their assistance to the Inquiry is greatly appreciated.

6 | The Saskatoon Police Service – Then and Now

The Saskatoon Police Service, and to a lesser extent the Saskatoon City Police Association, elicited a great deal of evidence about the problems and challenges plaguing the Saskatoon Police Service in 1990. The Saskatoon Police Service also presented evidence of improvements that have been instituted since 1990.

The evidence established that the Saskatoon Police Service has had, generally, a long and honorable history and has served this community well and continues to do so. Notwithstanding this history and the integrity of its members, the Inquiry identified some significant problems as the evidence unfolded.

Organization and Operation of the Plainclothes Division

In the year 1990 and thereafter, the Service suffered from major morale and leadership problems. The decision to abolish the various specialized divisions that had long existed proved to be a mistake. A Morality Officer cannot be expected to be a Traffic Investigator and a Youth Counselor, depending on the task given to him or her each day. I concede that police training needs to be broad and moving members into various units or divisions of the Service gives them experience and the insights they need to broaden their competence. I conclude, from all I saw and heard, however, that members function best when they are attached to a particular division or function. Transfers would appear to be most justified where promotion arises or an officer requires further training. The evidence suggested that the Saskatoon Police Service has wisely returned to the model of specialized investigation units.

The investigative work of plainclothes officers was also hampered by "4 day on/4 day off" 12 hour shift rotation in place at the time. This system caused both internal and external complaints as investigation files would often sit unattended until the Investigator returned from his or her four days off. This problem was partly due to failure of file supervisors to assign a substitute Investigator to cover the primary Investigator's absence. For instance, the Stonechild file not reassigned when Sgt. Jarvis began his four day period on December 1, 1990, even though Sgt. Jarvis made this explicit request.

The evidence also revealed a more fundamental problem with the training and promotion of investigators around 1990. Deputy Chief Wiks testified that, in 1990, investigators were not provided with the training necessary to perform their jobs. He also indicated that, at the time, seniority was given too much weight in the promotion process. Deputy Chief Wiks testified to a number of improvements that have been made in regard to training and promotion in recent years.

Breakdown in the Chain of Command

I have commented on the shortcomings of the Plainclothes Division in 1990. A greater crisis existed at the top of the Police Department. The commissioned officers, in 1990 and early 1991, did not perform adequately or professionally their duties in regard to the Stonechild investigation. Chief Penkala testified that he ought to have been informed by his officers of the discovery of Stonechild's body. Apparently he was not. Penkala also testified that he would have ordered his Deputy Chief to review the investigation if he had read or been informed about the March 4, 1991 article, which contained grave allegations about the

Service. This did not happen. This breakdown in the chain of command points to the need for changes in attitude, in training and accountability.

Deputy Chief Wiks provided evidence as to one improvement that the Saskatoon Police Service has instituted to address this problem. The Saskatoon Police Service recently created a Sudden Death Review Committee. Investigations into sudden deaths can no longer be concluded without the approval of this committee.

The Need for Racial and Cultural Diversity in the Saskatoon Police Service

It is abundantly and painfully clear that Aboriginal people are significantly under-represented in the Saskatoon Police Service. Joe Penkala, a former chief of the Saskatoon Police Service, explained the racial imbalance as follows:

> "A. Well, we dealt with issues surrounding the involvement of Aboriginal people within the Police Service. One of the – one of the issues that constantly came up during my time was the hiring practices and that we weren't hiring Native Aboriginal people. We – we did address those issues. We did whatever we could within our resources to invite Aboriginal people to joint the police force. I personally recall speaking to the Native government, I think it was probably Saskatoon Tribal Council, and invited them at that point to send their young people to the police department for the possibility of becoming candidates and serving on the police force. Now, so while there may not have been a specific person co-ordinating that issue, there was certainly attention paid to that.
>
> ...
>
> One of the things that I did know is that we had very few, if any, applications from the Aboriginal community. And when – when I personally got involved in some of these issues I learnt very quickly that the Aboriginal people did not want to be in the profession of policing."[431]

I do not accept the suggestion that Aboriginal leaders and persons are not interested in policing. I point out the large number of Aboriginal social workers, teachers, probation officers, nurses, lawyers, and, increasingly, but in smaller numbers, judges. Why should anyone think that the police profession would be any less appealing or interesting?

I add, parenthetically, but without any statistical information, that I have met a large number of Aboriginal men and women in the RCMP, both professionally and personally. Surely the Province of Saskatchewan and the City of Saskatoon have a pressing responsibility to join with the leaders of the Aboriginal communities, Aboriginal colleges and schools, and the chiefs and band leaders to develop and promote programs to encourage Aboriginal police candidates. If Cst. Louttit is an example of what we can expect from Aboriginal peace officers, then the search for candidates should proceed as quickly as possible. One can only hope that many more officers like him will be recruited.

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[431] Evidence of Joe Penkala, Inquiry transcript, vol. 21 (October 20, 2003): 3930-3932

Responsiveness to Complaints

As the evidence unfolded, I became concerned that some members of the Saskatoon Police Service may hold an overly defensive attitude when it comes to complaints about the Service and its members.

For instance, when faced with both internal and external complaints about the Stonechild investigation, the Saskatoon Police Service did not lift a finger to inquire into the merits of the complaints against its members. In February of 1991, Cst. Louttit attempted to raise concerns about the investigation with both his Staff Sergeant and the Staff Sergeant in charge of the Major Crimes Unit. Cst. Louttit was told that he had to deal directly with Jarvis. No other action was taken. After the March 4, 1991 StarPhoenix article, the Stonechild file might have been revisited had the Saskatoon Police Service been responsive to the complaint that the file had been prematurely closed.

A defensive posture was apparent in May of 2003 when the public was misled by statements made by Deputy Chief Wiks to the press. The Deputy told the reporter that he was not aware that Cst. Hartwig and Cst. Senger were suspects in the RCMP investigation. Wiks was well aware that by that time they were the only suspects.

A defensive attitude was also revealed in various comments contained in the Minutes of the Issue Team. While the Issues Team undoubtedly performed legitimate tasks, it also evolved into a partisan forum for planning ways to rebut the evidence compiled by the RCMP against its members.

S/Sgt. Murray Zoorkan identified the issue when, during his testimony, he noted that while the Saskatoon Police Service will pursue its members in cases of wrongdoing, "if you're unjustly accused, we're defenders of our own." In other words, the Saskatoon Police Service will be an advocate for its members. This is certainly an attitude one would hope to see from the Saskatoon City Police Association, which has a partisan responsibility to protect the interests of its members. The Saskatoon Police Service, however, has a broader responsibility to the general public to ensure that its members observe and enforce the law. This responsibility includes receiving and investigating complaints about its members. In my view, a public body charged with the task of receiving and investigating complaints must never become an advocate for one side or the other.

Certainly, the Saskatoon Police Service must treat its members with respect and dignity and observe the procedural and substantive protections of the law. If, however, the Saskatoon Police Service becomes an advocate for its members, it assumes a role that is antithetical to its responsibility to the public. In assuming such a partisan role, the Saskatoon Police Service contributes to a public perception that the police cannot police themselves and that complaints against the police are futile. The perception was expressed by Gary Pratt:

> "Q. Now you, in answering questions of Mr. Curtis's, you indicated some apparent unhappiness with the Saskatoon Police Service. I wonder if you've – if you've filed any complaints with them or with anyone regarding the Saskatoon police?
>
> A. No, I haven't. I don't think I would really get any positive response.

> Q. Well, Mr. – Mr. Pratt, are you aware that you can file complaints against the Saskatoon police with the Police Service itself, the Saskatoon Board of Police Commissioners, or the Saskatchewan Police Commission?
>
> A. Oh, yes, I'm quite aware of all of that.
>
> Q. And you've chosen not to?
>
> A. I've chosen not to."[432]

Deputy Chief Wiks testified that the Saskatoon Police Service is currently exploring ways to improve the public complaint process, such as adding more venues for complaints. This review is being undertaken in consultation with other organizations such as the F.S.I.N. and the Open Door Society. The review will no doubt have positive results. However, as long as the Saskatoon Police Service continues to have a role in receiving and investigating complaints against its members, the adding of complaint venues will not motivate those who share Mr. Pratt's skepticism about the complaints process. The fundamental problem the Service has to address is the public perception that it does not take seriously complaints about its members and that it defends its members against complaints.

I do not wish to suggest that an obstructive and defensive attitude pervades the Saskatoon Police Service. The vast majority of the members of the police service that appeared at the Inquiry exhibited the best qualities of a police service: integrity, fairness, professional responsibility, and a keen sense of duty to all the people of Saskatoon. I particularly point to Sgt. Neil Wylie and Cst. Louttit as fine examples.

I was also impressed by the evidence that Counsel for the Saskatoon Police Service elicited from Deputy Dan Wiks of the changes that the Saskatoon Police Service have undergone in terms of training, procedures, and technological improvements. The Chief and the management of the Service are to be commended. A review in two or three years would be a useful exercise to see what changes have resulted.

7 | Final Comments

The eminent Canadian author, Hugh MacLennan, wrote a thoughtful and profound commentary on the chasm that separates Anglophones and Francophones in Canada. The novel, *Two Solitudes*, was published in 1945.

As I reviewed the evidence in this Inquiry, I was reminded, again and again, of the chasm that separates Aboriginal and non-Aboriginal people in this city and province. Our two communities do not know each other and do not seem to want to.

The void is emphasized by the interaction of an essentially non-Aboriginal police force and the Aboriginal community. The justice system produces another set of difficulties.

I was struck by the comments of Mr. Justice Cawsey in a report released in 1999: *Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta [Justice on Trial]*.[433] The Chair of the Task Force, Mr. Justice R.A. Cawsey, made these observations:

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[432] Evidence of Gary Pratt, Inquiry transcript, vol. 33 (January 9, 2004): 6335-6336

[433] (Edmonton: The Task Force, 1991)

1. A standard caution administered to an Aboriginal person may have little or no meaning.
2. Some Aboriginal people are deferential to people in authority and may therefore, answer any questions posed to them by police officers.
3. Aboriginal people will, at times respond by giving an answer they believe the police officer wishes to hear.
4. Although Aboriginal persons may appear to understand and speak English well, they may not understand the concepts used or they may translate them into equivalent Aboriginal concepts.
5. Non-Aboriginal concepts of time, space, and distance may not be the same as the concepts held by an Aboriginal person.
6. When an Aboriginal person is questioned about an event, all facts may not be brought out, especially if telling the whole story requires that the Aboriginal person criticize directly someone present, or if the telling of the story would result in overt expressions of emotion.

These comments were adopted by the Alberta Court of Appeal in R. v. Moneyas (1995), 194 A.R. 1 (C.A.) at 30.

I found the comments of Delia Opekokew at a Conference on Aboriginal Peoples and Justice in Saskatoon in 1994 instructive. I refer to page 202 of the published text:

> "It is the contention of the Indian people that principles of the court process tend to create fundamental problems for Indian people because of differences in culture. There is an overwhelming gulf between the Indian and the Anglo-Canadian culture on which the court process is based. The two cultures operate from very separate and different beliefs, myths and history. A Crown attorney familiar with Indian witnesses has commented:
>
> "Acts are never merely acts. They are also signals of attitude. Those signals, however, are often culture specific. When acts are seen but their signal content misinterpreted, it is impossible to avoid forming inaccurate interpretations of other. Until we understand what particular acts mean to the other, we will continually ascribe motivations and states of mind which are well off the mark."[434]

A striking example of how our two worlds view the police is found in the evidence of Trent Ewart, a non-Aboriginal, and Erica Stonechild, Neil Stonechild's sister. Erica Stonechild was asked why she and her mother did not report matters to the police:

> "Q. In general terms, can you explain to us why you say that, you don't go to the police?
>
> A. In general terms. There was no trust established there at all, period. My mother tried to teach us children that under every circumstance that you need help, call the police. That's their job, that's what they're there for. When you have conflict with that, what you've been taught all your life, but

---

[434] *Conference on Aboriginal Peoples and Justice* (Saskatoon, Saskatchewan: Purich, 1994)

> you're experiencing a whole lot of other things that suggest otherwise, then I'm sorry – there was a few incidences in my personal life and our entire family's. And I'm talking – when I say my entire family I'm talking about my mother and my brothers, you know, my uncle, my cousin, whoever happened to be most in our home at the – at that time. They were never reported simply because there is no trust. And it didn't - and it's not going to say that I'm slashing up the Saskatoon Police Force because, please, there is a lot of good people out there, I know that there is. But we can't ignore the fact that they're human, everybody's a human being.
>
> ...
>
> A. We didn't have no trust for the City Police. If we had more trust for the City Police, my mother would have been reporting them left, right and centre, every time they went AWOL from somewhere, every time they were UAL from somewhere, or run away from their community home where she was trying so hard to help them, you know, understand their cycle of life, or whatever you want to call it, they're way of being and holding themself."[435]

Trent Ewart testimony revealed a fundamentally different perspective:

> "Q. I understand in answering my learned friend's questions, Mr. Hesje, although you don't have any recollection of phoning the police at this time you agree it's possible you may have phoned the police?
>
> A. Probably. I phone them all the time.
>
> Q. Okay. I'm assuming if there's a problem you phone them.
>
> A. Yeah, it's better they handle it.
>
> ...
>
> Q. I see. I was interested in your comment that you call the police all the time.
>
> A. Right.
>
> Q. So if there's a problem you have no hesitation picking up the phone?
>
> A. Absolutely not.
>
> Q. You're not afraid of the police.
>
> A. No.
>
> Q. You're not Aboriginal, are you?
>
> A. No."[436]

I cannot leave this area without noting that the Saskatoon Police Service's submissions regarding the improvements to the Service did not contain any reference at all to attempts to improve the Service's interaction with Aboriginals and other racial groups. This is an area that requires more emphasis and attention.

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[435] Evidence of Erica Stonechild, Inquiry transcript, vol. 9 (September 22, 2003): 1624-1625, 1646

[436] Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1302, 1308-1309

As I ended my report I felt profound sympathy for Stella Bignell and the Stonechild family as a result of all that they were forced to endure.

I have sympathy too, for the past and present members of the Saskatoon Police Service who have worked hard, often in trying circumstances, to protect and serve the people of this community. What must they be feeling as the disclosures about "drop-offs" of Aboriginal persons have slowly and painfully emerged? How do they deal with these events —events they had absolutely no responsibility for? What of their families and their friends, what about the people they know in both the Aboriginal and non-Aboriginal communities? How do the members of a police service maintain their commitment and professionalism? That is a question I cannot answer. I can only highlight these concerns so that others may respond in a sensitive and supportive way, mindful of the responsibilities members have as peace officers.

I found the Inquiry, as I noted at the end of the hearings, challenging, difficult and sometimes painful. It has been a learning experience and a sobering one as well. I hope the report meets the expectations of the many people interested in the Inquiry. Not everyone will be satisfied with the results.

Dated at the City of Saskatoon in the Province of Saskatchewan, the 16th day of September 2004

Mr. Justice David H. Wright
Commissioner

Summary of Findings

1. Neil Stonechild was the subject of two complaints of causing a disturbance on the evening November 24, 1990.

2. Constable Bradley Senger and Constable Larry Hartwig, members of the Saskatoon Police Service, were dispatched at 11:51 p.m. to investigate a complaint about Neil Stonechild at Snowberry Downs.

3. Hartwig and Senger arrived at Snowberry Downs within minutes and carried out a search of the area. In the course of doing so, they encountered Neil Stonechild.

4. The constables took Stonechild into custody.

5. In the early morning hours of November 25, 1990, Stonechild died of cold exposure in a field in the northwest industrial area of Saskatoon.

6. Neil Stonechild's frozen body was found in a field in the northwest industrial area of Saskatoon on November 29, 1990.

7. There were injuries and marks on Stonechild's body that were likely caused by handcuffs.

8. The Saskatoon Police Service carried out an investigation. The preliminary investigation properly identified a number of suspicious circumstances surrounding the death.

9. The principal Investigator assigned to the case, Morality Sergeant Keith Jarvis, carried out a superficial and totally inadequate investigation of the death of Neil Stonechild.

10. Jarvis was informed by Jason Roy that Neil Stonechild was in the custody of the Saskatoon Police Service when Roy last saw Stonechild on the night of November 24/25, 1990. Jarvis did not record this important information in his notebook or Investigation Report.

11. Jarvis and his superior, Staff Sergeant Theodore (Bud) Johnson, concluded the investigation almost immediately and closed the file on December 5th, 1990, without answering the many questions that surrounded the Stonechild disappearance and death.

12. Jarvis dismissed important information provided to him by two members of the Saskatoon Police Service relating to the Stonechild disappearance and death.

13. In the years that followed, the chiefs and deputy chiefs of police who successively headed the Saskatoon Police Service, rejected or ignored reports from the Stonechild family members and investigative reporters for the Saskatoon StarPhoenix that cast serious doubts on the conduct of the Stonechild investigation. The self-protective and defensive attitudes exhibited by the senior levels of the police service continued, notwithstanding the establishment of an RCMP Task Force to investigate the suspicious deaths of a number of Aboriginal persons and the abduction of an Aboriginal man. These same attitudes were manifested by certain members of the Saskatoon Police Service during the Inquiry.

Recommendations

1. That the Minister of Justice undertake a thorough review of *The Coroner's Act*, mindful of suggestions made by Drs. Lew, Matshes, Dowling, and Emson.
2. That the Province of Saskatchewan establish an introductory program for Aboriginal candidates and candidates from minority communities for Municipal Police Services in Saskatchewan. The program could be established at the Saskatchewan Police College and be patterned after that established at the Native Law Centre. The Native Law Centre is an introductory legal studies program offered at the University of Saskatchewan since 1973 to Aboriginal students. The Centre has contributed to a significant increase in the number of Aboriginal professionals in the legal community.
3. That the Minister of Justice establish an advisory board composed of Police Service members charged with recruitment, representatives of the Aboriginal and non-Aboriginal communities and representatives from the private and public sectors who are knowledgeable about employee recruitment. The purpose of the board will be to recommend programs to encourage First Nations persons to enter Municipal Police Service.
4. That the Minister of Justice review and improve procedures established to deal with complaints from members of the public about inappropriate police conduct. Informational pamphlets should be provided in the waiting and interview rooms of all police stations in Saskatchewan explaining the complaint process. The forms should contain a section that can be removed from the pamphlet and used as a complaint form. It should contain directions as to where the form may be sent, either to a particular office in the Police Service, the Board of Police Commissioners, the Saskatchewan Police Commission, or to the Provincial Complaints Investigator charged with dealing with complaints against police.
5. That Municipal Police Services in larger centres should designate an Aboriginal peace officer with the rank of Sergeant, where possible, to act as a liaison person for First Nation persons and as an informal ombudsman to deal with complaints and concerns from Aboriginal and persons from minority communities.
6. That each Municipal Police Force provide to the Minister of Justice an annual report as to complaints about police officers in its service and the disposition of the complaints.
7. That municipal peace officers receive in-depth training in race relations. The training should include information about Aboriginal culture, history, societal and family structures. A refresher course should be provided every three years. It is important that course leaders include Aboriginal peace officers, including members of the RCMP.
8. That a review be undertaken of the courses that police candidates take in anger management and dispute resolution. Given the sometimes highly emotional and stressful conditions officers face in their work, it is important that the first responders be specially trained to react professionally and appropriately.

Acknowledgements

Many have contributed to the Inquiry and I am grateful for their assistance. Counsel for the parties have provided valuable advice and suggestions.

My thanks particularly to the following persons. To Joel Hesje who has done an outstanding job as Commission Counsel. He was ably assisted by David Stack. Candace Congram, Executive Director, did an excellent job arranging for the sittings of the Inquiry and accommodating counsel, the media and interested parties as the process unfolded.

My appreciation also to Irene Beitel, our energetic and dedicated clerk. Also to Melva Olsen-Thoen for all of her work as Commission secretary and typist.

I am grateful for the assistance of Chief Russell Sabo of the Saskatoon Police Service who co-operated fully with the Commission and oversaw the security arrangements made with respect to the hearings of the Inquiry and provided security thereafter.

I am indebted also to Chief Superintendent McFadyen, Shelley Sentes, and members of the RCMP for their participation and for the security the RCMP provided in the Inquiry venue. I particularly appreciate the special pains taken by Constable Garth McLean.

And finally and most importantly, my deep appreciation to Lynette, my wife, for her encouragement and support throughout the inquiry process and her helpful suggestions about the organization of the Report.

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HONOURABLE MR. JUSTICE DAVID HENRY WRIGHT

Mr. Justice Wright graduated from the University of Saskatchewan (B.A. and LL.B.) in 1955. He articled with the law firm of Milliken & Milliken of Regina and was called to the Saskatchewan Bar in 1956. Mr. Justice Wright joined the firm of MacDermid & Co. in 1956, progressing to senior partner in 1960.

Justice Wright is a Past Provincial President of the Canadian Bar Association and Past Vice-chairman of the Law Foundation of Saskatchewan and regular lecturer at the Bar Admission Course. Mr. Justice Wright was appointed a Justice of the Court of Queen's Bench of Saskatchewan since 1981. In 1992, Justice Wright took education leave and taught as a regular faculty member at the College of Law, University of Saskatchewan (Civil Procedure, Ethics).

Commission Counsel and Staff

JOEL A. HESJE, Commission Counsel

Mr. Hesje graduated from the University of Saskatchewan (LL.B. and B.A.) in 1983. He articled to the late former Chief Justice Frederick Johnson and former Chief Justice Mary Batten, of the Court of Queen's Bench for Saskatchewan and was called to the Saskatchewan Bar in 1984. Hesje joined the firm of McKercher McKercher and Whitmore in 1986 and has been a partner since 1990.

Mr. Hesje practices in the area of Civil Litigation. He has extensive experience in the trial and appellate courts of Saskatchewan and has appeared as counsel in the Supreme Court of Canada.

Mr. Hesje has been a sessional lecturer at the College of Law, University of Saskatchewan, and has presented numerous papers at Saskatchewan Legal Education Society Seminars and Canadian Bar Association meetings. He is currently a Director of the Saskatchewan Legal Education Society, and a member of the Canadian Bar Association.

CANDACE CONGRAM, Executive Director

Ms. Candace Congram comes to the Commission from the Communications and Public Education branch of Saskatchewan Justice and Saskatchewan Corrections and Public Safety. Previously, Ms. Congram held a Director position for a Saskatchewan Communications firm and has served as a Communications Consultant for private and non-profit agencies. Ms. Congram is currently a member of the International Association of Business Communicators (IABC).

DAVID STACK, Assistant Commission Counsel

Mr. David Stack graduated from the University of Saskatchewan (LL.B. [great distinction] and B.A. [great distinction]) in 1999. Mr. Stack joined the firm of McKercher McKercher & Whitmore in 1999 and articled under John R. Beckman, Q.C.

Mr. Stack practices in the area of Civil Litigation. He has experience in all levels of court in Saskatchewan and has appeared as assistant counsel in the Supreme Court of Canada.

In 2002-2003, Mr. Stack lectured at the College of Law, University of Saskatchewan as Assistant Professor of Law. He has prepared a number of articles for publication by the Saskatchewan Legal Education Society Seminars, the Canadian Bar Association, and the Saskatchewan Law Review. He is currently a member of the Canadian Bar Association.

MELVA OLSEN

Secretary/Receptionist

COMMISSION OF INQUIRY INTO THE DEATH OF NEIL STONECHILD

- The body of Neil Stonechild was found in the north industrial area of Saskatoon in November 1990. The original investigation determined the cause of death was probable hypothermia.
- In February 2000, the bodies of Rodney Naistus and Lawrence Wegner were found in an industrial area of Saskatoon, near the Queen Elizabeth Power Station. The first investigation of these deaths determined that both had died of probable hypothermia.
- Also in February 2000, Darrell Night came forward and alleged that two Saskatoon Police Service officers picked him up, drove him outside the city and dropped him off in sub-zero weather to walk back to Saskatoon.
- The Minister of Justice, at the request of the Saskatoon Chief of Police, requested that the RCMP undertake an investigation into the circumstances leading to the deaths of Mr. Naistus and Mr. Wegner. The investigation was to include a full review of related allegations that members of the Saskatoon Police Service had engaged in the practice of transporting and abandoning individuals at the outskirts of the city.
- As a result, the RCMP investigation also included the circumstances leading to the deaths of Lloyd Dustyhorn in January 2000, Darcy Dean Ironchild in February 2000, and Neil Stonechild in November1990.
- The investigation of the incident reported by Mr. Night resulted in the conviction of two Saskatoon Police Service officers for unlawful confinement.
- The investigations of the deaths of Mr. Dustyhorn, Mr. Ironchild and Mr. Naistus were concluded and it was determined that, based on the evidence, charges were not warranted. The Minister of Justice then ordered Coroner's Inquests into the three deaths. These inquests have been completed.
- The investigation of the death of Mr. Stonechild was concluded and it was determined that there is not sufficient evidence to lay charges. However, there was evidence that Mr. Stonechild had contact with members of the Saskatoon Police Service on the day he was last seen alive.
- On February 20, 2003, the Minister of Justice for Saskatchewan announced the appointment of the Honourable Mr. Justice D. H. Wright to conduct a Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild.
- The purpose of the Inquiry is not to determine criminal or civil responsibility. Rather, its purpose is to conduct a public inquiry into the circumstances that resulted in the death of Mr. Stonechild, including the nature and extent of contact between Mr. Stonechild and members of the Saskatoon Police Service. The Commission is also to look into the way in which the 1990 investigation of Mr. Stonechild's death was conducted.
- Commissioner Wright has designated Mr. Joel A. Hesje of Saskatoon as Commission Counsel.
- The Commission is to deliver its final report and recommendations to the Saskatchewan Minister of Justice.

Opening Remarks

INTRODUCTORY REMARKS GIVEN AT THE COMMENCEMENT OF THE INQUIRY HEARINGS

September 8, 2003

I intend to make some preliminary comments before the inquiry begins formally.

I want to emphasize as I have before how important it is that the proceedings of the inquiry be as fair and balanced as possible, mindful of the interests of the parties. It is also essential that the public have as much information about the proceedings as possible, commensurate with the proper conduct of the hearings and the interests of the parties involved. The role of the media will be very important. In matters of this sort there must be transparency and accountability.

It is helpful, I believe, to refer to the comments made by the Ontario Court of Appeal in *Re The Children's Aid Society of the County of York*. I refer particularly to the following quotations. Firstly to those of Mr. Justice Mulock who said:

> ...in answering the questions submitted it might be advisable to point out the nature of the inquiry in question. It is one to bring to light evidence or information touching matters referred to the Commissioner. ...The Commissioner **should avail himself of all reasonable sources of information, giving a wide scope to the inquiry.** If, for example, some person were to inform the Commissioner where useful documents or other evidence could be obtained, it would seem reasonable that he avail himself of such a source of information. ...It is for the Commissioner, from all available sources, to bring to light such evidence as may have a bearing on the matters referred to him... (emphasis added)

And the comments of Mr. Justice Riddell:

> ...A Royal Commission is not for the purpose of trying a case or a charge against any one, any person or any institution–but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available. ...
>
> Everyone able to bring relevant facts before the Commission should be encouraged, should be urged, to do so.
>
> **Nor are the strict rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission...** (emphasis added)

And finally the comments of Mr. Justice Middleton:

> **...It is an inquiry not governed by the same rules as are applicable to the trial of an accused person.** The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and in discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exist, may be remedied and misconduct, if misconduct exist, may be put an end to and be punished, not by the Commissioner, but by appropriate proceedings against any offending individual.

> **This is a matter in which the fullest inquiry should be permitted.** All documents should be produced, and all witnesses should be heard, and the fullest right to cross-examine should be permitted. Only in this way can the truth be disclosed. … (emphasis added)

Counsel will recognize that these observations are contained in my ruling with respect to the polygraph evidence. They are of sufficient importance however to bear repeating.

I intent to now invite Mr. Hesje to make some preliminary remarks and to outline for us all the course he expects the evidence will take and the order of the witnesses for the inquiry. I should say before he begins that at the conclusion of his remarks I will invite counsel to raise any matter which they think is appropriate at this juncture so you will have an opportunity to speak then.

Mr. Hesje…

Opening Statement of Commission Counsel
September 8th, 2003

Over the past several months, Commission staff have interviewed close to one hundred potential witnesses. We have met with various groups, agencies and individuals that have an interest in these proceedings. We have obtained and reviewed numerous documents and reports including evidence gathered by an RCMP Task force in relation to the death of Neil Stonechild. We have been provided with any and all information we have requested from the Saskatoon Police Service. Additional evidence may yet come to light. However, we are now ready to start presenting this evidence to this Public Inquiry.

A list of sixty-two witnesses we intend to call, in the order we anticipate they will appear, has been posted on the Inquiry Web site: www.stonechildinquiry.ca. There may be additional witnesses called, and there will undoubtedly be some changes in the order of appearance. We will endeavor to provide as much advance notice as possible of any changes. Such changes will be posted on the web site.

Over the course of the Inquiry we intend to present all evidence, relevant to the terms of reference that has come to light. I would like to outline in general terms the course that I anticipate this evidence will take. To the extent possible, the evidence will be presented chronologically. We will begin with the events of November 24th, 1990. We will hear testimony from persons having contact with Neil Stonechild on that date. We will aslo present police records indicating possible contact between Saskatoon Police Service and Neil Stonechild in the late hours of November 24th, 1990. We will also hear from various witnesses that received information as to the events of November 24th, 1990.

We will then present evidence as to the circumstances surrounding the discovery of Neil Stonechild's frozen body on November 29th, 1990. This will include testimony from the attending officers, the coroner, and the pathologist.

The focus of the evidence will then shift to the Saskatoon Police Service investigation of the death. We will hear from the investigating officers and the chain of command within the Saskatoon Police Service at that time – many of whom are now retired. We intend to present all available evidence as to the conduce of the Saskatoon Police Service investigation including the extent of such investigation. We will also call the two Saskatoon Police Service officers who were dispatched in response to a complaint involving Neil Stonechild on November 24th, 1990.

We intend to present evidence as to the how of the death of Neil Stonechild became the subject of an RCMP investigation in 2000. Evidence that came to light as a result of that investigation will be presented in as much detail as possible.

In an attempt to cover all matters of potential public concern relating to the circumstances surrounding the death of Neil Stonechild we shall call evidence as to the information received or uncovered by the Saskatoon Police Service since 1990. This will include evidence as to the Saskatoon Police Service's response to such information and to public concerns raised with respect to the matter.

Throughout the hearing there will be evidence as to the policies, procedures, and practices of the Saskatoon Police Service that may have impacted on the Stonechild investigation. There will also be evidence of changes in such policies, procedures, and practices over the years.

Opening Remarks

Mr. Commissioner, you have observed that one of the primary purposes of a Public Inquiry is to inform the public considering the facts of the matter to be inquired into. I would like to briefly outline some of the steps that the Commission has taken to insure that the evidence at the hearings is available to the public.

The Commission is committed to a process of public hearings. As a general rule, the hearings are open to the public and the media. The dates and location of the hearings are posted on the inquiry web site. It should be noted that not all of the hearings will be held in this room. The hearings will commence at 10:00 a.m. on each day and conclude at approximately 4:30 p.m., unless you should otherwise direct.

The testimony given at the hearing will be transcribed and posted daily on the Inquiry web site. One hard copy of the transcript and a copy of all exhibits, subject to any ruling of confidentiality, will be maintained at the Commission office at 1020 – 606 Spadina Crescent East for public review by anyone not having access to the internet. Furthermore, hard copies of the transcripts may be ordered directly from the court reporter for a fee.

As you have previously stated, the media plays an important role in a Public Inquiry. The executive director to the Commission, Candace Congram, will be in attendance at the hearings on a regular basis. She will serve as media liaison, and will attempt to accommodate any reasonable requests from members of the media. To further accommodate the media, our clerk, Irene Beitel, will have extra copies of documents entered as exhibits for distribution to members of the media. These copies should be available on the day the exhibits are entered into evidence.

Ms. Congram has available for distribution to the media, copies of your introductory remarks and this opening statement.

Thank you.

E APPENDIX

Undertaking of Party/Witness

Undertaking of Party/Witness

I undertake to the Commission of the Stonechild Inquiry that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents or information to anyone except as may be authorized by the Commissioner.

I understand that this undertaking has no force or effect once any such document or information has become part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents or information, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction.

Signature	Witness
Date	Date

Undertaking of Counsel to the Commission of Inquiry

I undertake to the Commission of Inquiry that any and all documents or information which are produced to me in connection with the Commission's proceedings will not be used by me for any purpose other than those proceedings. I further undertake that I will not disclose any such documents or information to anyone for whom I do not act, and to anyone for whom I act only upon the individual in question giving the written undertaking of party/witness annexed hereto. In the event I act for a coalition or organization, I will disclose such documents and information to anyone who is a member of that coalition or organization only upon that individual in question giving the written undertaking of party/witness annexed hereto.

I understand that this undertaking has no force or effect once any such document or information has become part of the public proceedings of the Commission, or to the extent that the Commissioner may release me from the undertaking with respect to any document or information. For greater certainty, a document is only part of the public proceedings once the document is made an exhibit at the Inquiry.

With respect to those documents or information which remain subject to this undertaking at the end of the Inquiry, I undertake to either destroy those documents or information, and provide a certificate of destruction to the Commission, or to return those documents to the Commission for destruction.

______________________	______________________
Signature	Witness
______________________	______________________
Date	Date

G

APPENDIX

Witness List

Stonechild Inquiry Witness List

The following is a list of witnesses in the order in which the Commission proposes to call them at the Hearing. Please note, this list is subject to change. There may be some additions to the witness list and certain witnesses may have to be taken out of the proposed order.

Stella BIGNELL
Debbie MASON
Gerry MASON
Marcel STONECHILD
Pat PICKARD
Jason ROY
Cheryl ANTOINE
Flora BINNING
Julie BINNING
Gary HORSE
Lucille NEETZ-HORSE
Trent EWART
Cst. Perry SZABO
Jack HIESER
Bruce GENAILLE
Tracy HORSE
Shelley GRIGOROVICH
Brenda VALIAHO
Dianna FRASER
Father Andre POILIEVRE
Erica STONECHILD
Rene LAGIMODIERE
Bob MORTON
S/Sgt. Michael PETTY
Dr. Brian FERN
Dr. Jack ADOLPH
Kevin LEWIS
Brett MAKI
Larry FLYSAK
John RICHARDSON
Dr. John YUILLE
Dr. Emma LEW
Donald MONTAGUE
Chuck MOORE
Richard HARMS
Gregory ROBERT
Keith JARVIS
Joe PENKALA
Frank SIMPSON
Dave WILTON
Ed DRADER
Theodore JOHNSON
Bruce BOLTON
S/Sgt. Raymond PFIEL
Sgt. Neil WYLIE
Cst. Goeffrey BRAND
Sgt. Al BROOKS
Sgt. John WOODLEY
Cst. Lawrence HARTWIG
Cst. Bradley SENGER
Cst. Ernie LOUTTIT
Eli TARASOFF
Jim MADDIN
David SCOTT
Dr. Graeme DOWLING
Gary ROBERTSON
S/Sgt. Murray ZOORKAN
Kirk DYcK
Glen WINSLOW
Deputy Chief Dan WIKS
Gary PRATT
Chief Superintendent Darrell McFADYEN
Dr. Jim ARNOLD

Witness List

G

APPENDIX

Witness Appearance List by Date

Date	Witness
Monday, September 08	Stella Stonechild Bignell Debra Mason Jerry Mason Patricia Pickard
Tuesday, September 09	Patricia Pickard (cont'd) Marcel Stonechild Jason Roy
Wednesday, September 10	Jason Roy (cont'd)
Thursday, September 11	Jason Roy (cont'd)
Monday, September 15	Jason Roy (cont'd) Lucille Horse
Tuesday, September 16	Lucille Horse (cont'd) Gary Horse Brenda Valiaho
Wednesday, September 17	Dr. Graeme Dowling Trent Ewart Fr. Andre Poilievre
Thursday, September 18	Fr. Andre Poilievre (cont'd) Flora Binning Shelley Grigorovich Perry Szabo Tracy Horse
Monday, September 22	Kevin Lewis Diana Fraser Erica Stonechild Rene Lagimodiere
Tuesday, September 23	Brian Fern Rene Lagimodiere (cont'd)
Wednesday, September 24	Rene Lagimodiere (cont'd) Jack Adolph Brett Maki
Thursday, September 25	Richard Harms Julie Binning Cheryl Antoine Bruce Genaille

Witness List

Date	Witness
Monday, October 6	Robert Morton Michael Petty
Tuesday, October 7	Raymond Pfeil Gregory Robert Geoffrey Brand
Wednesday, October 8	Geoffrey Brand Ernie Louttit
Thursday, October 10	Ernie Louttit (cont'd) James Drader James Brooks
Friday, October 10	Jack Heiser Bruce Bolton
Tuesday, October 14	Glen Winslow Theodore Johnson Neil Wylie Eli Tarasoff
Wednesday, October 15	John Woodley Frank Simpson Donald Montague Joe Penkala
Thursday, October 16	Joe Penkala (cont'd) Charles Moore
Monday, October 20	Joe Penkala (cont'd) Gary Robertson
Tuesday, October 21	Gary Robertson (cont'd)
Wednesday, October 22	Gary Robertson (cont'd) Keith Jarvis
Thursday, October 23	Kirk Dyck
Monday, November 24	Keith Jarvis (cont'd)
Tuesday, November 25	Keith Jarvis (cont'd)
Wednesday, November 26	Keith Jarvis (cont'd)
Thursday, November 27	David Scott
Friday, November 28	James Maddin

Date	**Witness**
Monday, January 5, 2004	James Maddin (cont'd) Larry Flysak John Richardson
Tuesday, January 6, 2004	John Richardson (cont'd) Murray Zoorkan
Wednesday, January 7, 2004	Darrell McFadyen Gary Pratt
Thursday, January 8, 2004	Darrell McFadyen (cont'd) Gary Pratt Daniel Wiks
Friday, January 9, 2004	Daniel Wiks (cont'd)
Monday, March 8, 2004	Daniel Wiks (cont'd)
Tuesday, March 9, 2004	Daniel Wiks (cont'd)
Wednesday, March 10, 2004	Daniel Wiks (cont'd) Dr. Jim Arnold
Thursday, March 11, 2004	Daniel Wiks (cont'd) Dave Wilton
Friday, March 12, 2004	Dr. John Yuille
Monday, March 15, 2004	Dave Wilton (cont'd) Cst. Lawrence Hartwig
Tuesday, March 16, 2004	Cst. Lawrence Hartwig (con't)
Wednesday, March 17, 2004	Dr. Emma Lew
Thursday, March 18, 2004	Cst. Bradley Senger

Witness List

WITNESSES – Family, Friends and Acquaintances of Neil Stonechild

Name	D.O.B.	Relationship to Neil Stonechild	Transcript Volume #	Transcript Page #
ANTOINE, Cheryl	74.05.03	School friend of Stonechild's 1990 – Jason Roy's girlfriend	12	2195
BIGNELL (STONECHILD), Stella	41.02.03	Neil's mother	1	14
BINNING, Flora	72.03.05	1990 – Eddie Rushton's girlfriend	8	1411
BINNING, Julie	75.12.15	1990 – Dated Neil Stonechild	12	2116
EWART, Trent	72.11.08	1990 – Living with Claudine Neetz at Snowberry Downs apartment	7	1289
FRASER, Dianna		1990 – Social Worker at Yarrow Youth Farm Contacted SPS after Stonechild's death re: Neil's fight with Gary Pratt	9	1531
GENAILLE, J. Bruce	67.04.20	Neil Stonechild's cousin	12	2276
GRIGOROVICH, Shelley	64.01.26	90.11.24 – phoned in complaint of intruder outside of friends' residence – #118 O'Regan Crescent	8	1451
HORSE, Gary	74.05.22	Friend of Neil Stonechild Now husband of Lucille 90.11.24 Babysitting with Lucille at Snowberry Downs	6	955
HORSE, Lucille		School friend of Neil Stonechild 90.11.24 Babysitting at Snowberry Downs	5/6	884
HORSE, Tracy	73.03.22	Acquaintance of Neil Stonechild's	8	1476
MASON, Debra	57.09.09	Neil Stonechild's aunt/Stella's sister	1	108
MASON, Jerry		Debra's husband	1	136
PICKARD, Patricia	45.08.25	1990 – Operated a group home where Neil Stonechild was staying	1/2	160
POILIEVRE, Father Andre	36.08.12	Catholic Priest 1990 – Taught Jason Roy at Joe Duquette High School 1995 – Counselor at Correction Centre where Jason Roy disclosed what was causing him anxiety after the death of Neil Stonechild	7/8	1312

Name	D.O.B.	Relationship to Neil Stonechild	Transcript Volume #	Transcript Page #
PRATT, Gary Leslie	71.03.27	Construction Worker Acquaintance of Neil Stonechild Altercation with Neil Stonechild regarding guns, shortly before Neil's death.	32 33	6235 6266
ROY, Jason	73.12.22	Friend of Neil Stonechild With Neil Stonechild the night Stonechild went missing	2/3/4/5	348
STONECHILD, Erica	67.02.27	Neil Stonechild's sister	9	1599
STONECHILD, Marcel	71.05.19	Neil Stonechild's brother	2	274
VALIAHO, Brenda	53.06.30	1990 – Teacher/Therapist with Social Services at Kilborn Hall Taught/Counseled Jason Roy	6	1048

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APPENDIX

Witness List

WITNESSES – Professionals & Other

Name	Reference	Transcript Volume #	Transcript Page #
ADOLPH, Dr. Jack	Pathologist – preformed autopsy of Neil Stonechild	10	1954
ARNOLD Ph.D., Dr. William James	Registered Psychologist & Counselor (Saskatoon)	37	6939
DOWLING, Dr. Graeme	Chief Medical Examiner – Alberta	7	1153
FERN, Dr. Brian	1990 – Coroner	10	1700
FLYSAK, Larry	Representative of Commercial Weather Services with Environment Canad	30	5713
HARMS, Richard	Located Neil Stonechild's body	12	2101
HEISER, Jack	Employed by SPS as Director of Information – SIMS	17	3137
LEW, Dr. Emma	Medical Examiner/Pathologist (Miami/Florida)	42	8120
McFADYEN, Chief Superintendent Darrell	RCMP – Commanding officer of the Task Force in 2000	32/33	6068
MOORE, Charles	Retired RCMP Worked with CPIC – explained how CPIC works	20	3817
RICHARDSON Ph.D., Dr. John Steven	Professor with Dept. of Pharmacology, College of Medicine, U. of S.	30/31	5732
ROBERTSON, Gary	Photogrammetrist	21/22/23	3957
YUILLE Ph.D., Dr. John Charles	Forensic Psychologist (Salt Spring Island, B.C.)	39	7416

WITNESSES: Saskatoon Police Services

Name	Status with SPS	Reference	Transcript Volume #	Transcript Page #
BOLTON, Bruce	Retired	1990-Reader – Initialed Occurrence/ Investigation Reports re: Stonechild – Nov.29/30, 1990	17	3216
BRAND, Geoffrey	Constable	1990.11.30 talked to unknown informant about Neil Stonechild	14/15	2698
BROOKS, James	Retired	1990 – Morality Division	16	3074
DRADER, James	Retired	1990 – Operational S/Sgt. and Reader	16	3044
DYCK, Kirk	Staff Sergeant	1990 – Plainclothes Division	24	4612
HARTWIG, Lawrence	Constable	One of the officers dispatched to call re: Neil Stonechild causing disturbance at Snowberry Downs – November 24th, 1990	40/41	7704
JARVIS, Keith	Retired	1990 – Original Investigator of Neil Stonechild's death	23/24	4429
JOHNSON, Theodore	Retired	1990 – S/Sgt. in charge of Morality	18	3354
LAGIMODIERE, Rene	Retired	1990 – Constable at location where Stonechild's body was found	9/10/11	1652
LEWIS, Kevin	Constable	Arrested Jason Roy – Dec.20, 1990	9	1496
LOUTTIT, Ernie	Constable	Copied initial report on Neil Stonechild's death. Told by Jarvis to let Major Crimes handle Stonechild case.	15/16	2822
MADDIN, James	Retired	1990 – working cells night of Neil's death	29	5503
MAKI, Brett	Constable	1990.10.26 – responded to robbery at Humpty's Family Restaurant – Jason Roy suspect in robbery	11	2054
MONTAGUE, Donald	Retired	1990 – Deputy Chief in charge of Operations	19	3644
MORTON, Robert	Retired	1990 – worked Identification. At scene where Stonechild's body was located	13	2338
PENKALA, Joe	Retired	1990 – Chief of Police	19/20/21	3709

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Name	Status with SPS	Reference	Transcript Volume #	Transcript Page #
PETTY, Michael	Staff Sergeant	1990 – Patrol Sergeant at scene of Stonechild death. Held supervisory roll.	13	2484
PFEIL, Raymond	Retired	1990 – 'A' Platoon Sgt. – worked as Reader 1990.12.02-took call of Dianna Fraser's re: Stonechild	14	2534
ROBERT, Gregory	Constable	1990 – Canine Unit	14	2653
SCOTT, David	Retired (Chief)	1990 – Crime Stoppers/ Media Coordinator	28	5352
SENGER, Bradley	Constable	One of the officers dispatched to the call re: Neil Stonechild causing disturbance at Snowberry Downs – November 24th, 1990	43	8344
SIMPSON, Frank	Retired	1990 – Superintendent in charge of Operations	19	3575
SZABO, Perry	Constable	1990 – Working Patrol 90.11.13 – attended group home re: Stonechild	8	1460
TARASOFF, Eli	Retired	1990 – Special Investigation Unit Felt the Stonechild Investigation was incomplete.	18	3472
WIKS, Daniel	Deputy Chief	1990 – Corporal Appointed by Chief Sabo to coordinate the SPS with respect to this Inquiry	33/34/ 35/36/ 37/38	6362 7124
WILTON, David	Retired	1990 – Duty Officer No recollection of body of Neil Stonechild being found.	38 40	7382 7637
WINSLOW, Glenn	Retired	1990 – Patrol Sergeant – north Saskatoon	18	3324
WOODLEY, John	Sergeant	1990 – Dog Handler	19	3551
WYLIE, D. Neil	Sergeant	Dealt with Neil Stonechild and the Pratts in another incident re: robbery (guns)	18	3409
ZOORKAN, Murray	Staff Sgt.	Assigned to Cold Squad in 2000. Duty to investigate cold files – unsolved cases that resulted in deaths	31	5914

Stonechild Inquiry Public Exhibits

Exhibit #	Description	Date Entered	Transcript Page #
P-1	March 1991 Newspaper article by Terry Craig	08-Sep-03	72
P-2	Written notes ID 1534 Report	09-Sep-03	223
P-3	Aerial diagram	09-Sep-03	266
P-4	Map	09-Sep-03	343
P-5	Statement of Marcel Stonechild	09-Sep-03	343
P-6	Handwritten witness statement of Jason Roy	10-Sep-03	406
P-7	Statement of Jason Roy given to Constable Warner	10-Sep-03	468
P-8	Statement of Jason Roy given to Mr. Hesje	10-Sep-03	474
P-9	Conviction record along with fingerprint identification	11-Sep-03	559
P-10	Probation Order, 24 Oct, 1990, Information, Appearance Notice, Endorsements Et Cetera, Re: Jason Roy	11-Sep-03	559
P-11	Department of Social Services – Pre-disposition Report Update, Feb 4, 1991	11-Sep-03	561
P-12	Temporary Record, Saskatoon Police Service, Number 41329 for Jason Roy	11-Sep-03	562
P-13	Saskatoon Police Service Temporary Record, Sept 26, 1989	11-Sep-03	563
P-14	CPIC response for 41329, Sept 26, 1989	11-Sep-03	563
P-15	Saskatoon Police Service – SIMMS Record	11-Sep-03	563
P-16	Youth Court Docket, 21 Jan 1989 Re: 41329, Jason Roy – 24 Oct, 1990	11-Sep-03	564
P-17	Saskatoon Police Incident Report, Nov 26, 1990 Re: Jason Roy	11-Sep-03	565
P-18	Doucuments including Information Number Y1211877, Appearance Notice, Notice to Parent & Warrant Remanding a Young Person	15-Sep-03	797
P-19	Information and Warrant to Remand Young Person	15-Sep-03	804
P-20	Appearance Notice and Attached Documents Dated Dec 20, 1990	15-Sep-03	804
P-21	Notes made by Constable Lewis on Dec 20, 1990	15-Sep-03	806
P-22	Notes made by Sergeant Jarvis	15-Sep-03	812
P-23	Written Notice to Parent or Other Person	15-Sep-03	869
P-24	Curriculum Vitae of Dr. Graeme Dowling 1	7-Sep-03	1156
P-25	Letter Dated March 27, 2000 from Sergeant K.C. Lyons, RCMP to Dr. G. Dowling	17-Sep-03	1181
P-26	Declaration of Coroner	17-Sep-03	1182
P-27	Three-Page Autopsy Report	17-Sep-03	1182
P-28	Photographs of Autopsy	17-Sep-03	1184
P-29	Photographs 1 to 33 Taken at Scene of Location of Body	17-Sep-03	1185

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P-30	Two-Page Letter Dated April 14, 2000 from Dr. Graeme F. Dowling to Sergeant K.C. Lyons, RCMP	17-Sep-03	1187
P-31	Autopsy Report Dated July 3, 2001 by Dr. Graeme Dowling	17-Sep-03	1214
P-32	Pair of Handcuffs and Key	17-Sep-03	1244
P-33	Figure 2 from Robertson Report	17-Sep-03	1245
P-34	Handwritten Statement of Trent Ewart of Nov 30, 1990	17-Sep-03	1296
P-35	Complaint Check, Field Interview, Booking Form and Detention Record Dated Feb 26, 2000 Re: Vanessa Kayseas	18-Sep-03	1347
P-36	Saskatoon Police Service Complaint, Dated Nov 24th, 1990	18-Sep-03	1449
P-37	Complaint Number 96422 of 1990, Called in by helley Grigorovich on Nov 24, 1990	18-Sep-03	1450
P-38	Photocopy of one page of notebook	18-Sep-03	1462
P-39	Complaint hard copy and incident report	18-Sep-03	1469
P-40	Memorandum to Keith Atkinson	22-Sep-03	1499
P-41	Investigation Report	22-Sep-03	1561
P-42	Map of area where body located	22-Sep-03	1663
P-43	Copy of handwritten notes for Nov 29, 1990	22-Sep-03	1663
P-44	Occurrence Report Dated November 29, 1990	22-Sep-03	1663
P-45	Four Pages of Dr. Fern's Notes	23-Sep-03	1727
P-46	Declaration of Coroner When Inquest Not Required	23-Sep-03	1730
P-47	Copy of Death Certificate Filed with Vital Statistics	23-Sep-03	1731
P-48	Handwritten Death Certificate	23-Sep-03	1732
P-49	Autopsy Report	23-Sep-03	1737
P-50	Letter Dated April 11, 1991 from Saskatoon City Police to Dr. Fern, Enclosing Toxicology Report	23-Sep-03	1745
P-51	Copy of Excerpt from Saskatoon StarPhoenix, Dec 3, 1990	23-Sep-03	1749
P-52	Incident Report Dated October 26, 1990, and Attached Memo	24-Sep-03	2061
P-53	(For Identification) Statement of Julie Binning Given to the RCMP	25-Sep-03	2171
P-54	(For Identification) Summary of Anticipated Evidence of Julie Binning	25-Sep-03	2172
P-55	Interview Statement of Cheryl Antoine dated Mar 15, 2000	25-Sep-03	2257
P-56	Interview Statement of Cheryl Antoine dated May 23, 2000	25-Sep-03	2258
P-57	3-page Investigation Report by Sergeant Morton	06-Oct-03	2350
P-58	Video Recording of Scene	06-Oct-03	2357
P-59	Incident Report from January of 1993 by Robert John Morton	06-Oct-03	2480
P-60	One-page Investigation Report by R. T. Pfeil dated Dec 2, 1990	07-Oct-03	2559

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P-61	Bundle of documents comprising part of the original Saskatoon Police Service file, including as cover page a note from Acting Superintendent Zoorkan to Deputy Chief Wiks	07-Oct-03	2562
P-62	Notebook of Cst. Geoffrey Brand	07-Oct-03	2721
P-63	(For Identification) Map of City of Saskatoon 1989/1990	07-Oct-03	2732
P-63	Map of City of Saskatoon 1980/1990 (Full Exhibit)	14-Oct-03	3327
P-64	Charging & Booking Form dated Nov 25, 1990	08-Oct-03	2819
P-65	Copy of Notes from Cst. Louttit's Notebook (Disclosure Si-51)	08-Oct-03	2848
P-66	Summary of RCMP Interview with Mr. Brooks	09-Oct-03	3088
P-67	(For Identification) SIMS Printout Re: Neil Stonechild (9 Pages) (NOTE: Exhibit P-67 became full exhibit Mar 18, 2004, Pg. 8374)	10-Oct-03	3155
P-68	Complaint Control Report (Page 48 & Page 52)	10-Oct-03	3216
P-69	Complaint Control Report (Page 53)	10-Oct-03	3216
P-70	Transcript of Interview with Inspector McFadyen Nov 14, 2000	14-Oct-03	3336
P-71	Copy of Glen Winslow's Notes for the Period Nov 24 & Nov 25, 1990	14-Oct-03	3343
P-72	StarPhoenix Article Dated Feb 22, 2000 Referencing an Interview by Leslie Perreaux with Ms. Bignell	14-Oct-03	3398
P-73	Occurrence Report & Related Documents	14-Oct-03	3427
P-74	Copy of Notes Made by Sergeant Wylie	14-Oct-03	3427
P-75	Complaint Hard Copy Re: Complaint of August 10, 1990		3427
P-76	Copy of Court File in Relation To Mr. P. (Information & Supporting Documents From Provincial Court)	14-Oct-03	3429
P-77	Summary of Interview with Inspector McFadyen	14-Oct-03	3488
P-78	Dispatch Record dated Nov 25, 1990	15-Oct-03	3561
P-79	Witness Evidence (Summary of Interview with RCMP)	15-Oct-03	3597
P-80	Witness Statement given to RCMP by Mr. Montague	15-Oct-03	3709
P-81	Saskatoon Police Department 1990 Annual Report	15-Oct-03	3729
P-82	(For Identification) Report of Interview of Wagner by RCMP Dated 03/06/24	15-Oct-03	3735
P-83	Copy of Saskatoon StarPhoenix newspaper article – Nov 30, 1990	16-Oct-03	3806
P-84	Copy of Saskatoon StarPhoenix newspaper article – Dec 1, 1990	16-Oct-03	3808
P-85	Copy of Saskatoon StarPhoenix newspaper article – Dec 3, 1990	16-Oct-03	3813
P-86	Copy of fax from Sergeant Moore to Sergeant Lyons dated Dec 1, 2000 & attached person adds document	16-Oct-03	3823

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Exhibit #	Description	Date Entered	Transcript Page #
P-87	Copy of fax from Sergeant Moore to Sergeant Turner dated March 12, 2000 & attached persons queries	16-Oct-03	3825
P-88	CPIC Information persons queries (part of Investigative Summary)	16-Oct-03	3827
P-89	Fax from Sergeant Bechard to Sergeant Turner Dated Nov 28, 2000 & Attached CPIC Queries for Stonechild and Roy	16-Oct-03	3828
P-90	Copy of Fax from Segeant Bechard to Sergeant Turner Dated March 21, 2000 & Attached CPIC Queries	16-Oct-03	3833
P-91	StarPhoenix Article, Sept 12, 1987, Headed "City Police Morale Low and Sinking"	20-Oct-03	3924
P-92	StarPhoenix Article, June 11, 1988, Headed "'Poor' Cops Blame System"	20-Oct-03	3925
P-93	StarPhoenix Article, Undated, Headed "Police 'Morale Problem' Said Really Resistant to Change"	20-Oct-03	3925
P-94	StarPhoenix Article, Sept 24, 1988, Headed "Officers to Fill Own Gas Tanks"	20-Oct-03	3925
P-95	Job Description for Inspector in charge of Investigative Support	20-Oct-03	3956
P-96	Curriculum Vitae of Gary Robertson	20-Oct-03	3991
P-97	Page 3262 of Transcript in State of California v. Mouser	20-Oct-03	4040
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P-99	Email from Bill Miles Dated July 10, 2003	20-Oct-03	4093
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P-101	Letter Dated Nov 30, 2000 to Sergeant Lyons from Gary Robertson	21-Oct-03	4170
P-102	Letter Dated Jan 8, 2001 to Sergeant Lyons from Gary Robertson	21-Oct-03	4171
P-103	Report Prepared by Gary Robertson entitled Photogrammetric Analysis of an Imprint Mark Re: Autopsy Photos of Neil Stonechild	21-Oct-03	4171
P-104	Hard Copy of Powerpoint Presentation entitled Photogrammetry – Solutions for Accurate 3D Measurements and Modelling	21-Oct-03	4185
P-105	CD Copy of Gary Robertson's Background Documents	21-Oct-03	4298
P-106	Copy of Notes of Keith Jarvis for the Period July 17, 1990 to Dec 7, 1990	22-Oct-03	4435
P-107	Transcript of a Taped Interview of Keith Jarvis by Sergeant Warner and Sergeant Lyons on Oct 12, 2000	22-Oct-03	4520
P-108	Telephone Interview of Keith Jarvis by Cst. Warner on Mar 3, 2000	22-Oct-03	4526

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P-110	Interview of Keith Jarvis, June 21, 2000	22-Oct-03	4529
P-111	Transcript of Interview of Keith Douglas Jarvis by Mr. Robert Martell	23-Oct-03	4606
P-112	Cassette Tape of RCMP Interview, Oct 12, 2000	23-Oct-03	4607
P-113	Cassette Tapes of Interview of Keith Jarvis by Robert Martell on Aug 11, 2003	23-Oct-03	4611
P-114	Record of Training Courses of Keith Jarvis	24-Nov-03	4753
P-115	Photograph #41 of Exhibit P-28 as Identified by Mr. Jarvis	26-Nov-03	5175
P-116	Photograph #42 of Exhibit P-28 as Identified by Mr. Jarvis	26-Nov-03	5175
P-117	Directive from the Superintendent's Office Dated Mar 30, 1988 Re: Sudden Death/Homicide Investigation	26-Nov-03	5273
P-118	Directive from the Superintendent's Office Dated Oct 27, 1988 Re: Support a Major Crime Investigative Unit (Samciu)	26-Nov-03	5274
P-119	Memorandum Dated July 17, 2003 from Deputy Chief Dan Wiks to Mr. Barry Rossmann, Re: SPS Policy and Training, 1990 and 2003	26-Nov-03	5274
P-120	Saskatchewan Police Procedure Manual Excerpt Re: Sudden Deaths & Homicides – Document Si-57(a)	26-Nov-03	5281
P-121	Excerpts of Transcript of CBC Interview of Jim Maddin, June 9, 2003	28-Nov-03	5518
P-122	RCMP Interview Statement of James Maddin	28-Nov-03	5544
P-123	Washington Post Article – "Indian Deaths Compound Troubles in a Canadian Prairie City"	28-Nov-03	5558
P-124	Task/task Action Report and Witness Evidence of James Maddin	28-Nov-03	5559
P-125	Saskatoon StarPhoenix Article, Mar 13, 2003	28-Nov-03	5567
P-126	For Identification: Memo Dated Oct 18, 1976: General Order of Chief Kettles	05-Jan-04	5711
P-127	Handwritten Document – Surface Weather Record	05-Jan-04	5718
P-128	Typewritten Summary of Exhibit P-127 (9 Pages)	05-Jan-04	5723
P-129	Curriculum Vitae of John Steven Richardson, Ph.D.	05-Jan-04	5765
P-130	Case Study – 37 Year Old Investigation	06-Jan-04	5921
P-131	Memo Dated Feb 22, 2000 by Staff Sergeant Zoorkan to Staff Sergeant Sawyer	06-Jan-04	5939
P-132	Handrwritten Report by Sergeant Murray Zoorkan, written out Feb 7, 2001 from notes made at the time; 6 Pages, edited	06-Jan-04	5995
P-133	SIMS Report Re. Neil Stonechild, Feb 22, 2000	06-Jan-04	5997

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P-136	Court Documents Re: Gary Pratt	08-Jan-04	6307
P-137	Notes of Interview	08-Jan-04	6334
P-138	Report on Handcuffs in use by Constable Hartwig and Constable Senger in 1990 with Attached Serial Number Record of Handcuffs	09-Jan-04	6527
P-139	Forensic Laboratory Report Re. Handcuffs	09-Jan-04	6531
P-140	Copy of StarPhoenix Article "Officers Stayed on the Job During Stonechild Probe"	09-Jan-04	6545
P-141	Saskatchewan Police Commission Hearing Decision by Officer R.D. Laing, Q.C. Dated Dec 1, 1993	09-Jan-04	6548
P-142	Reconstructed Organizational Chart of the Saskatoon Police Service for 1990	09-Jan-04	6577
P-143	Report by Constable Ballard to Deputy Chief Wiks Dated Oct 20, 2003	09-Jan-04	6579
P-144	Report of Deputy Chief Wiks Dated July 28, 2003 Re: Informant Registry System 1990 and 2003, and Attachments including File Retention Information	09-Jan-04	6582
P-145	Letter Dated November 14, 2003 from Deputy Chief Wiks to Mr. Rossman Re: Destruction of Files in 1998, with Attachments	09-Jan-04	6586
P-146	Report Re: Record Search by Constable Farley Maddaford Dated Sept 19, 2003	09-Jan-04	6587
P-147	Standing Order 2003-057 – File Retention of Operational Reports	09-Jan-04	6587
P-148	Report Re: SPS Policy and Training, 1990 and 2003, with Attachments	09-Jan-04	6592
P-149	Report on Recommendations from Audit Project IV, Dated July 8, 1992, Audit of Investigative Support Section	09-Jan-04	6594
P-150	Memorandum to Dan Wiks from Chief Sabo, Dated June 21, 2003	08-Mar-04	6645
P-151	Copy of Chief's Message, Dated July 17, 2003	08-Mar-04	6649
P-152	Stonechild Inquiry Informational, dated July 28, 2003	08-Mar-04	6651
P-153	Stonechild Inquiry Informational, Dated Aug 4, 2003	08-Mar-04	6652
P-154	Report Dated December 5, 2003 Re: Suspicious Death Review Committee	08-Mar-04	6663
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P-156	Document Entitled Forensic Pathology (SI-63)	08-Mar-04	6671
P-157	Document Entitled: Saskatoon Police Service Major Scene Record	08-Mar-04	6672

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P-159	Document Entitled Performance Enhancement Checklist	08-Mar-04	6676
P-160	Letter from Deputy Chief Dan Wiks, Dated Dec 9, 2003 Re: Training Reports 1987 & 2002	08-Mar-04	6678
P-161	Report Dated Nov 12, 2003 to Mr. Rossmann Re: SPS Policy Relative to Seized Articles at a Death Scene	08-Mar-04	6681
P-162	Letter Dated Dec 11, 2003 from Deputy Chief Dan Wiks to Mr. Rossmann Re: Categories of Deaths on SIMS	08-Mar-04	6688
P-163	Document SI-94 (Re: Case Types 10-25 & 10-39)	08-Mar-04	6690
P-164	Document Entitled Counts of 10-25 and 10-39 Complaints Containing "GOA" or "Gone On Arrival" in Concluding Remarks	08-Mar-04	6690
P-165	Letter Dated Nov 12, 2003 from Deputy Chief Dan Wiks Re: File Loads of Major Crimes and Human Intervention Investigators	08-Mar-04	6694
P-166	Report Dated Nov 12, 2003 from Deputy Chief Dan Wiks Re: Number of Complaints received by the Saskatoon Police Service	08-Mar-04	6699
P-167	Letter Dated Oct 30, 2003 with Attached Standing Order Number 2003-041	08-Mar-04	6701
P-168	Memorandum Dated Dec 1, 2003 From Chief Sabo to the Mayor	08-Mar-04	6709
P-169	Document Showing Files Assigned to Sargent Jarvis in 1990	09-Mar-04	6738
P-170	Dr. Arnold's Curriculum Vitae	10-Mar-04	6945
P-171	Document Entitled: The RCMP Investigation into the Death of Neil Stonechild	11-Mar-04	7191 (also see 7381)
P-172	Group of Three Photographs of a Running Shoe and an Envelope	11-Mar-04	7295
P-173	Articles from Saskatoon Sun June 1997 Blue Lagoon by Brian Trainor	11-Mar-04	7309
P-174	Copy of Letter Dated October 2, 2003 from Mr. Hesje to Mr. Rossmann	11-Mar-04	7347
P-175	Printout of Email Correspondence Between Mr. Rossmann and Dr. McGee	11-Mar-04	7361
P-176	Summary of Interview with Inspector McFadyen	11-Mar-04	7401
P-177	Dr. Yuille's Curriculum Vitae	11-Mar-04	7420
P-178	Report Prepared by Dr. Yuille, Dated Mar 1, 2004	12-Mar-04	7426
P-179	Police Service record of Constable Hartwig	15-Mar-04	7706
P-180	Copy of Constable Hartwig's Notes from Nov 24 to 29, 1990	15-Mar-04	7714
P-181	A & B: Dispatch records for Nov 24 & 25, 1990 Documents 1011 and 1013	15-Mar-04	7716

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APPENDIX

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P-182	Copies of Pages of Cst. Hartwig's Notes from 1989 through 1991 which reference dealings with Neil Stonechild or his family	15-Mar-04	7744
P-183	3 SIMS Hard Copies Provided by Cst. Hartwig to Sergeant Lyons – RCMP Document 706	15-Mar-04	7749
P-184	Transcript of Interview of Constable Hartwig in Meeting with Sergeant Lyons – May 18, 2000	15-Mar-04	7810
P-185	Three Witness Summaries, Dated May 7, 2000, May 12, 2000, May 15, 2000	15-Mar-04	7810
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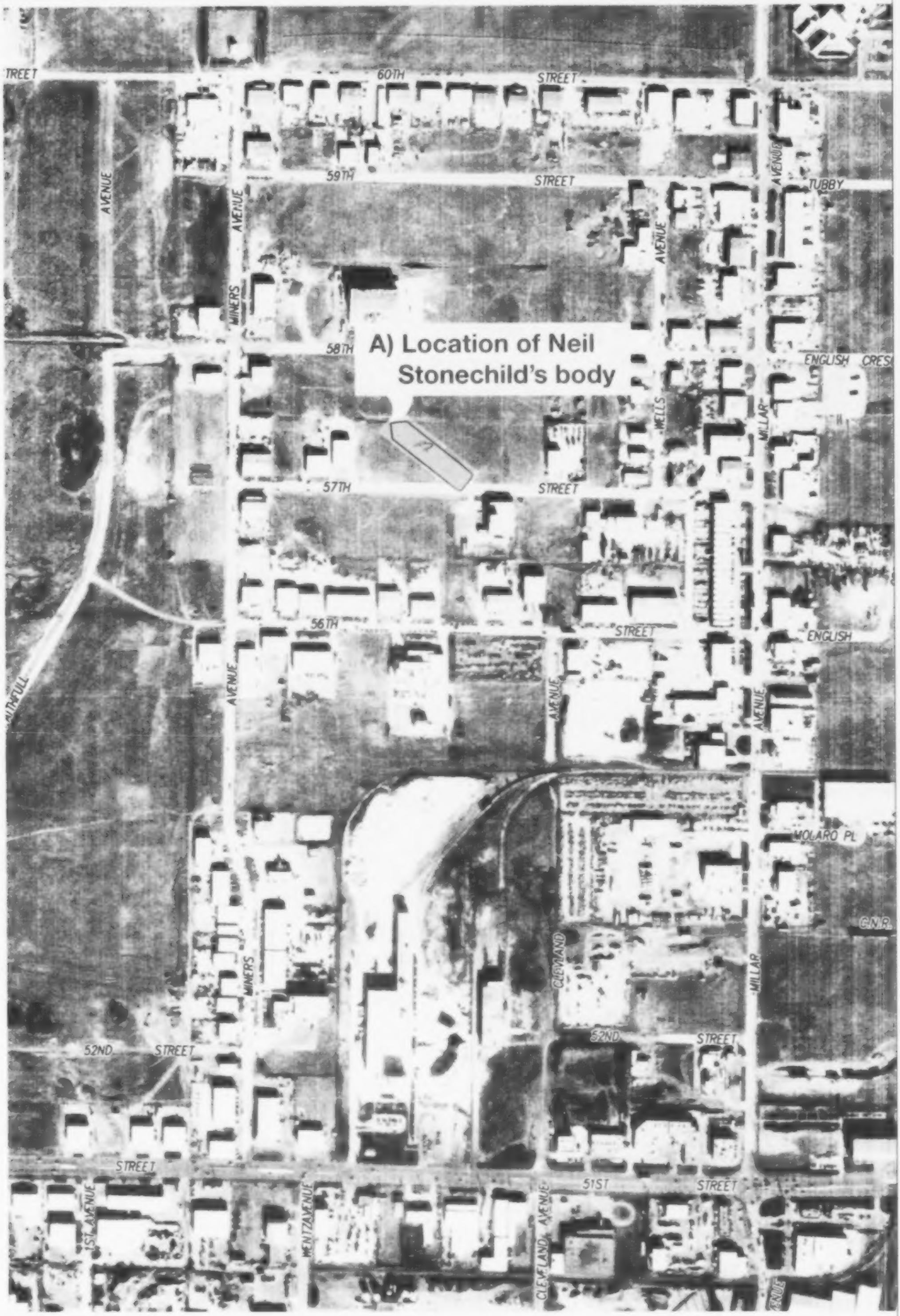
P-196	Minutes of Issue Team Meetings	18-Mar-04	8503
P-197	Statement of Constable Senger to Sergeant Lerat	29-Mar-04	8376
	END OF EXHIBITS		

Parties to the Commission and Counsel

Parties to the Commission	Counsel for Party
BIGNELL, Stella	Donald E. Worme, Q.C./Gregory J. Curtis Semaganis Worme & Missens
Federation of Saskatchewan Indian Nations	Silas E. Halyk, Q.C./Catherine M. Knox Halyk Kennedy Koskie Knox
HARTWIG, Cst. Larry	Aaron A. Fox, Q.C./Christopher C. Boychuk McDougall Gauley
JARVIS, Keith	Kenneth A. Stevenson, Q.C. Priel Stevenson Hood & Thornton LLP
PRATT, Gary	Mark Brayford, Q.C. Brayford Shapiro
ROY, Jason	Darren Winegarden Winegarden & Company
Royal Canadian Mounted Police	Bruce W. Gibson Department of Justice Canada
Saskatoon City Police Association	Drew Plaxton Walker Plaxton & Co.
Saskatoon Police Service	Barry H. Rossmann, Q.C. City of Saskatoon Office of the City Solicitor's
SENGER, Cst. Bradley	Jay D. Watson Cuelenaere Kendall Katzman Watson
WIKS, Deputy Chief Daniel	Richard Danyliuk McDougall Gauley

Aerial Photograph of Area Where Body Located

Exhibit P-42

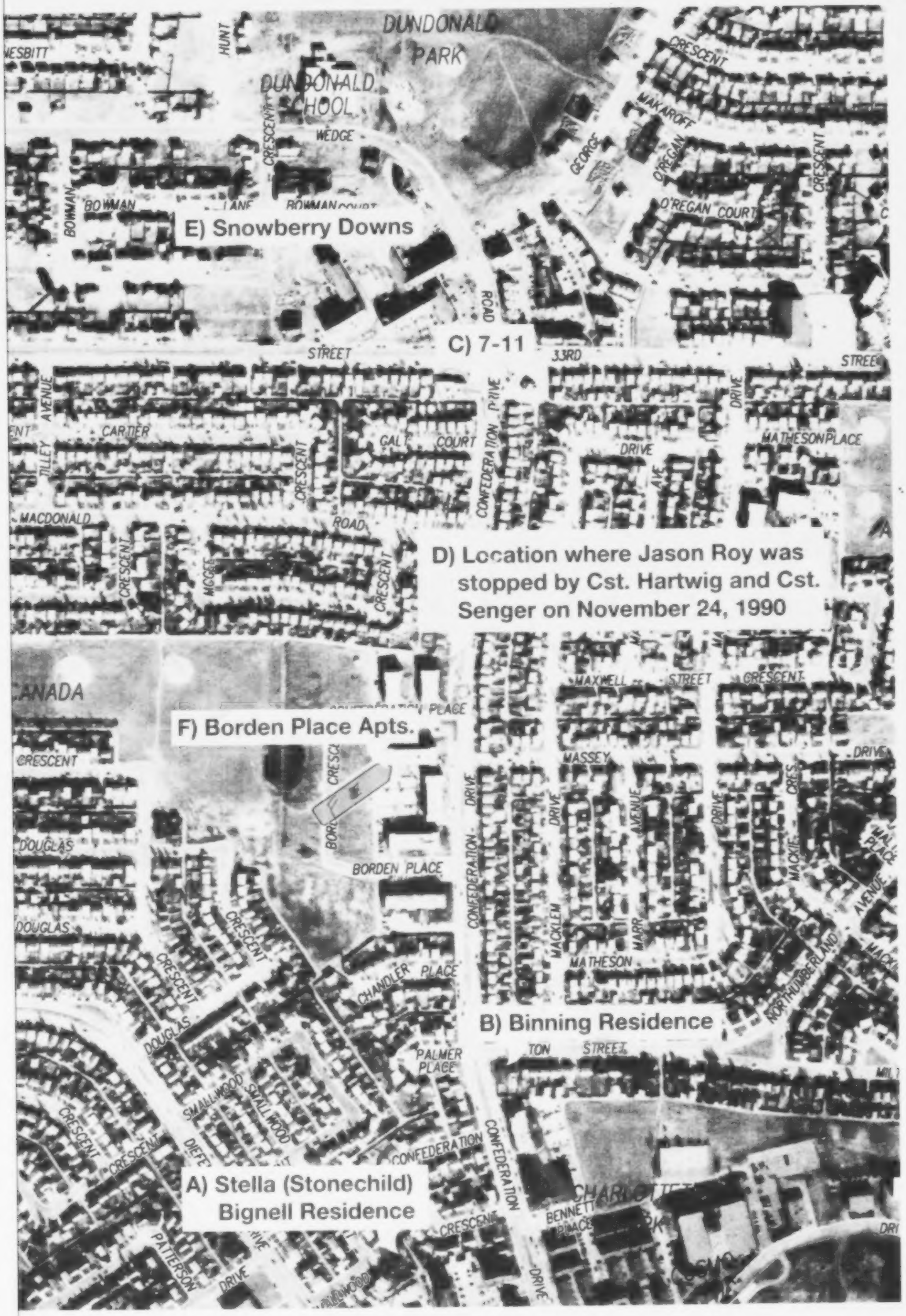


A) Location of Neil Stonechild's body

TREET
60TH
STREET
AVENUE
59TH
STREET
TUBBY
AVENUE
AVENUE
AVENUE
MINERS
58TH
ENGLISH
CRES
WELLS
MILLAR
A
57TH
STREET
56TH
STREET
ENGLISH
AVENUE
AVENUE
AVENUE
MOLARO PL
C.N.R.
MINERS
CLEVLAND
MILLAR
52ND
STREET
52ND
STREET
STREET
51ST
STREET
1ST AVENUE
WENTZ AVENUE
CLEVELAND AVENUE

Aerial Photograph Including 7-Eleven, Snowberry Downs, Milton Street

Exhibit P-4


DUNDONALD PARK
DUNDONALD SCHOOL
HUNT
NESBITT
CRESCENT
WEDGE
MAKAROFF
GEORGE
O'REGAN
O'REGAN COURT
BOWMAN
BOWMAN LANE
BOWMAN COURT
ROAD
STREET
33RD
STREET
AVENUE
TILLEY
CARTER
CRESCENT
GALT COURT
CONFEDERATION DRIVE
DRIVE
AVE
MATHESON PLACE
MACDONALD
ROAD
MCGEE
CRESCENT
CANADA
CONFEDERATION PLACE
MAXWELL STREET
CRESCENT
MASSEY
DRIVE
CRESCENT
DOUGLAS
BORDEN CRESCENT
BORDEN PLACE
AVENUE
MACKLEM
MARR
MATHESON
MACKIE
CRES
PLACE
AVENUE
NORTHUMBERLAND
CHANDLER PLACE
PALMER PLACE
SMALLWOOD
DIEFENBAKER
CONFEDERATION
CRESCENT
PATTERSON
DRIVE
TON STREET
MILTON
CHARLOTTE
BENNETT PLACE
DRIVE

E) Snowberry Downs

C) 7-11

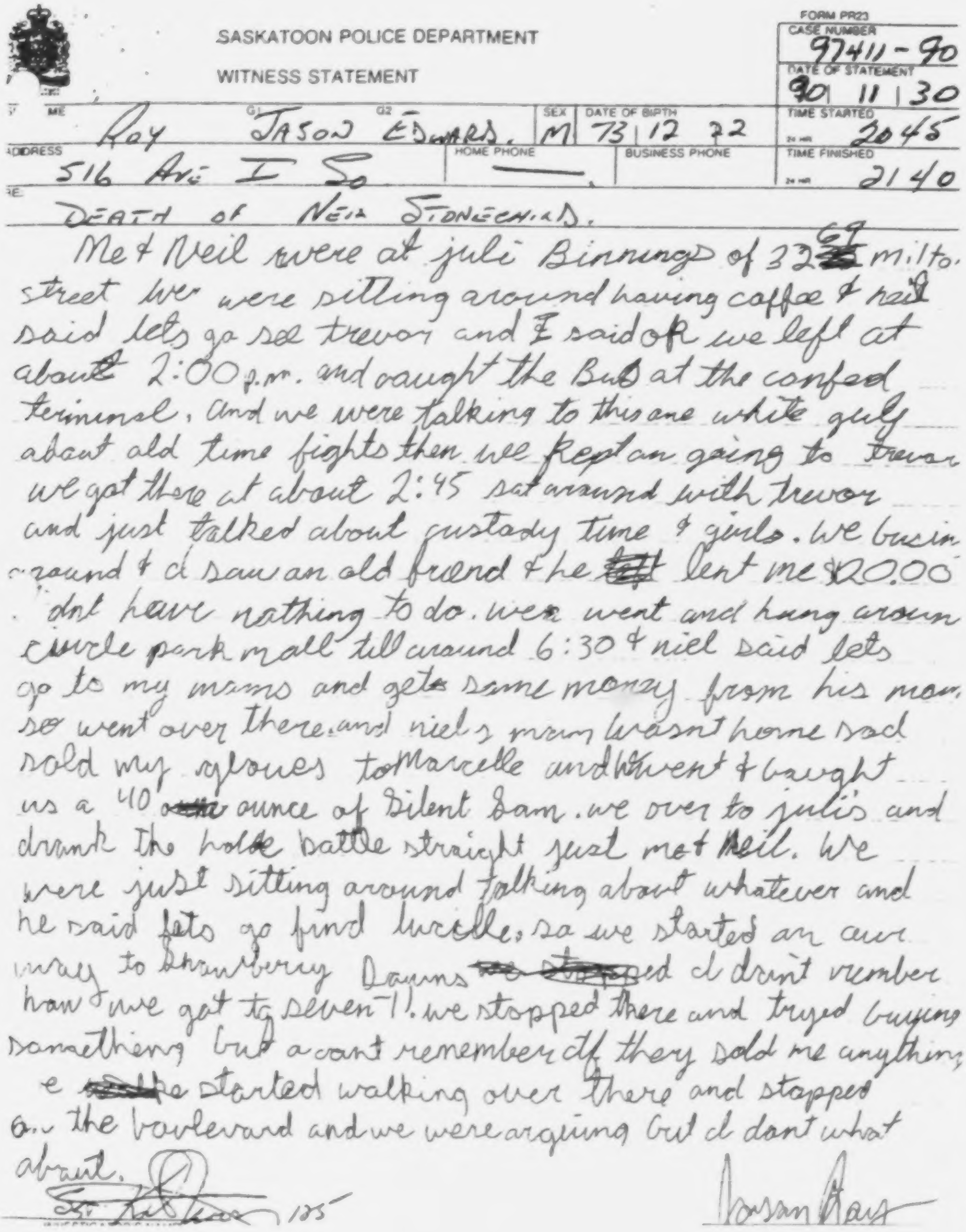
D) Location where Jason Roy was stopped by Cst. Hartwig and Cst. Senger on November 24, 1990

F) Borden Place Apts.

B) Binning Residence

A) Stella (Stonechild) Bignell Residence

Handwritten Statement of Jason Roy
Exhibit P-6



SASKATOON POLICE DEPARTMENT

WITNESS STATEMENT

FORM PR23

CASE NUMBER 97411-90

DATE OF STATEMENT 90 11 30

NAME Roy G1 JASON G2 EDWARDS. SEX M DATE OF BIRTH 73 12 22

TIME STARTED 24 HR 2045

ADDRESS 516 Ave I So HOME PHONE — BUSINESS PHONE

TIME FINISHED 24 HR 2140

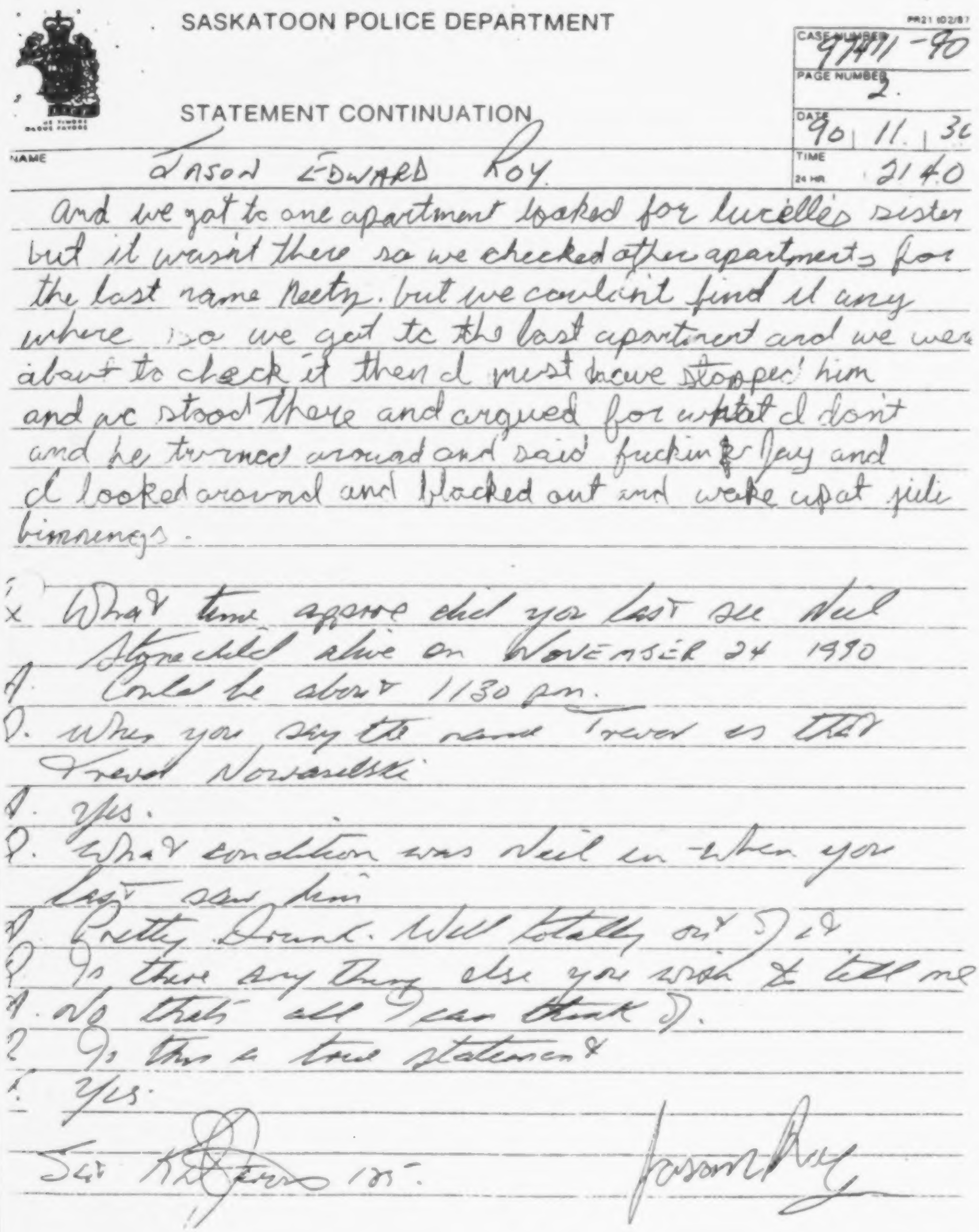
RE: DEATH of NEIL STONECHILD.

Me & Neil were at juli Binnings of 32~~[illegible]~~69 milton street we were sitting around having caffee & neil said lets go see trevor and I said ok we left at about 2:00 p.m. and caught the Bus at the confed terminal, And we were talking to this one white guy about old time fights then we kept on going to trevor we got there at about 2:45 sat around with trevor and just talked about custady time & girls. We buzin around & d saw an old friend & he ~~[illegible]~~ lent me $20.00 dnt have nothing to do. we went and hung aroun circle park mall till around 6:30 & niel said lets go to my moms and get some money from his mom. so went over there. and niel's mom wasnt home so d sold my gloves to Marcelle and we went & baught us a 40 ~~[illegible]~~ ounce of Silent Sam. we over to juli's and drank the hole battle straight just me & Neil. We were just sitting around talking about whatever and he said lets go find lucille, so we started on our way to Strawberry Downs ~~we stopped~~ d dont rember how we got to seven-11. we stopped there and tryed buying something but a cant remember if they sold me anything e ~~[illegible]~~e started walking over there and stopped on the boulevard and we were arguing but d dont what about.

135

Jason Roy

Handwritten Statement of Jason Roy
Exhibit P-6



PR21 (02/87)

SASKATOON POLICE DEPARTMENT

STATEMENT CONTINUATION

CASE NUMBER	97411 -90
PAGE NUMBER	2.
DATE	90 11 30
TIME 24 HR	2140

NAME JASON EDWARD ROY.

And we got to one apartment looked for lucelle's sister but it wasn't there so we checked other apartments for the last name Neety. but we couldn't find it any where so we got to the last apartment and we were about to check it then I must have stopped him and we stood there and argued for what I don't and he turned around and said fuckin Jay and I looked around and blocked out and woke up at julie binnings.

Q What time approx did you last see Neil Stonechild alive on NOVEMBER 24 1990
A. Could be about 1130 pm.
Q. When you say the name Trevor is that Trevor Nowoselski
A. Yes.
Q. What condition was Neil in when you last saw him
A. Pretty Drunk. Well totally out of it
Q. Is there any thing else you wish to tell me
A. No that's all I can think of.
Q. Is this a true statement
A. Yes.

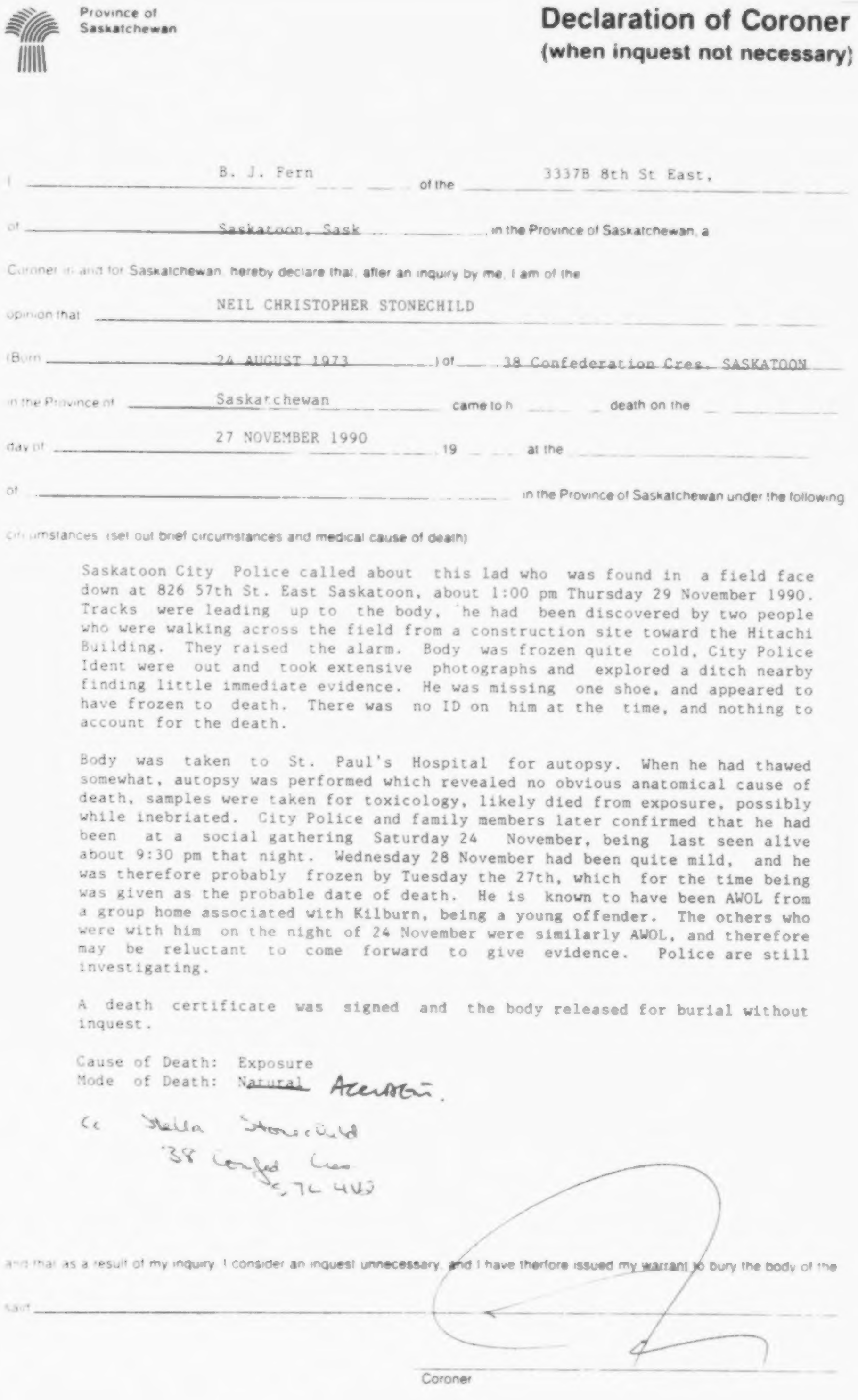
Sgt K. Jarvis 135.

Jason Roy

M

APPENDIX

Declaration of Coroner
Exhibit P-46



Province of
Saskatchewan

Declaration of Coroner
(when inquest not necessary)

I B. J. Fern of the 3337B 8th St East,

of Saskatoon, Sask, in the Province of Saskatchewan, a

Coroner in and for Saskatchewan, hereby declare that, after an inquiry by me, I am of the

opinion that NEIL CHRISTOPHER STONECHILD

(Born 24 AUGUST 1973) of 38 Confederation Cres. SASKATOON

in the Province of Saskatchewan came to h death on the

day of 27 NOVEMBER 1990 19 at the

of in the Province of Saskatchewan under the following

circumstances (set out brief circumstances and medical cause of death)

Saskatoon City Police called about this lad who was found in a field face down at 826 57th St. East Saskatoon, about 1:00 pm Thursday 29 November 1990. Tracks were leading up to the body, he had been discovered by two people who were walking across the field from a construction site toward the Hitachi Building. They raised the alarm. Body was frozen quite cold, City Police Ident were out and took extensive photographs and explored a ditch nearby finding little immediate evidence. He was missing one shoe, and appeared to have frozen to death. There was no ID on him at the time, and nothing to account for the death.

Body was taken to St. Paul's Hospital for autopsy. When he had thawed somewhat, autopsy was performed which revealed no obvious anatomical cause of death, samples were taken for toxicology, likely died from exposure, possibly while inebriated. City Police and family members later confirmed that he had been at a social gathering Saturday 24 November, being last seen alive about 9:30 pm that night. Wednesday 28 November had been quite mild, and he was therefore probably frozen by Tuesday the 27th, which for the time being was given as the probable date of death. He is known to have been AWOL from a group home associated with Kilburn, being a young offender. The others who were with him on the night of 24 November were similarly AWOL, and therefore may be reluctant to come forward to give evidence. Police are still investigating.

A death certificate was signed and the body released for burial without inquest.

Cause of Death: Exposure
Mode of Death: ~~Natural~~ Accident.

Cc Stella Stonechild
38 Confed Cres
S7L 4V3

and that as a result of my inquiry I consider an inquest unnecessary, and I have therfore issued my warrant to bury the body of the

said

Coroner

Autopsy Report dated January 30, 1991 by Jack Adolph
Exhibit P-49

ST. PAUL'S HOSPITAL
(Grey Nuns') of Saskatoon

P49

RECEIVED

AUTOPSY REPORT

SERIAL NO. ML 280-90

NAME: STONECHILD, Leo Christopher **AGE:** 17 **SEX:** Male

PATHOLOGIST: Dr. J. Adolph **ATTENDING PHYSICIAN:**

7

CORONER: Dr. B. Fern

DATE OF ADMISSION: Nov. 29/90 DOA **TIME OF DEATH:** 2200 hrs. Nov. 27/90

TIME OF AUTOPSY: 1230 hrs. Nov. 30/90

DISTRIBUTION: Sgt Bob Morton (Saskatoon City Police) **AUTOPSY** 3 days **AFTER DEATH**

SUMMARY OF FINDINGS

ANATOMICAL DIAGNOSES

HYPOTHERMIA - FREEZING

1. Freezing
2. Pulmonary congestion and edema
3. Recent abrasions
    A. Face
    B. Knees

This is Exhibit P49 in the Hearing of the Commission of Public Inquiry.
Dated 23 day of Sept 2003

Irene M. Bittel, C.C.

Tendered by Mr. Hesje

NOTANDUM:

This man was found in a frozen state in the north end of the city. The autopsy findings were not specific but were compatible with death due to hypothermia. There are no specific findings when death is due to hypothermia and freezing.

The police have indicated that the blood alcohol level was 150 mgm/100 ml of blood. This may have been a contributing factor but is generally not associated with marked incapacitation or coma. No other explanation for an altered mental state was found

JA:sm:mbs

J. Adolph

J. Adolph, M.D.
30 January 1991

St. PAUL'S HOSPITAL
(Grey Nuns') of Saskatoon

AUTOPSY REPORT – CONTINUED

NAME: STONECHILD, Leo Christopher **SERIAL NO.** ML 280-90

The body was identified to me by Sgt Bob Morton of the Saskatoon City Police and he received the clothes in the afternoon of November 29th, and they consisted of:

An insulted jacket, a shirt, blue jeans, thigh length shorts, jockey shorts, socks, a right shoe. When the shoe was removed there was a flat stone in it exterior to the sock and this was causing an indentation in the sole of the foot which remained because of the freezing. The entire body was frozen firm and we were unable to straighten the flexed arm. The knees were slightly flexed. There was depression of the right side of the face. There were the following recent linear abrasions:

There were two parallel superficial abrasions across the mid point of the nose directed obliquely downward to the right. The upper was 2.0 cm and the lower 2.5 cm in length and they were separated by a bridge of skin 2.6 cm in width. There was a curved recent similar abrasion on the cheek on the left side of the face, 5.5 cm in length, and this was convexed forward; there was also a recent abrasion just above this 1.0 x 0.6 cm. There were small abrasions over the lower border of each kneecap each approximately 1.5 x 1.0 cm. There were circular abrasions on the left side of the chest one at the iliac crest and one in the line of the anterior axillary fold at the nipple level and each of these is 1.0 cm in diameter.

The conjunctivae were opaque due to post mortem changes. There was a partial plate in the posterior part of the upper jaw. The mouth was unremarkable otherwise.

BRAIN:

Weighed 1360 grams and was unremarkable.

THYROID:

Unremarkable.

THYMUS:

Weighed 100 grams and was very congested

HEART:

Was unremarkable including the vessels. It weighed 300 grams.

LUNGS:

The left weighed 400 and the right 550 grams. They were a bright red color throughout.

ESOPHAGUS:

Unremarkable.

STOMACH:

Contained 200 ml of food fragments and some frozen fluid.

J Adolp

AUTOPSY REPORT — CONTINUED

NAME: STONECHILD, Leo Christopher **SERIAL NO.** ML 280-90

DUODENUM & SMALL BOWEL:

Unremarkable.

LARGE BOWEL & VERMIFORM APPENDIX:

Unremarkable.

LIVER:

Weighed 1450 grams.

SPLEEN:

Weighed 100 grams and was unremarkable.

ADRENAL GLANDS:

Unremarkable.

KIDNEYS:

Weighed 130 grams on the left and 160 grams on the right. They were unremarkable.

EXTERNAL GENITALIA:

Unremarkable.

Blood from the inferior vena cava, a portion of liver, gastric contents were given to Constable Morton.

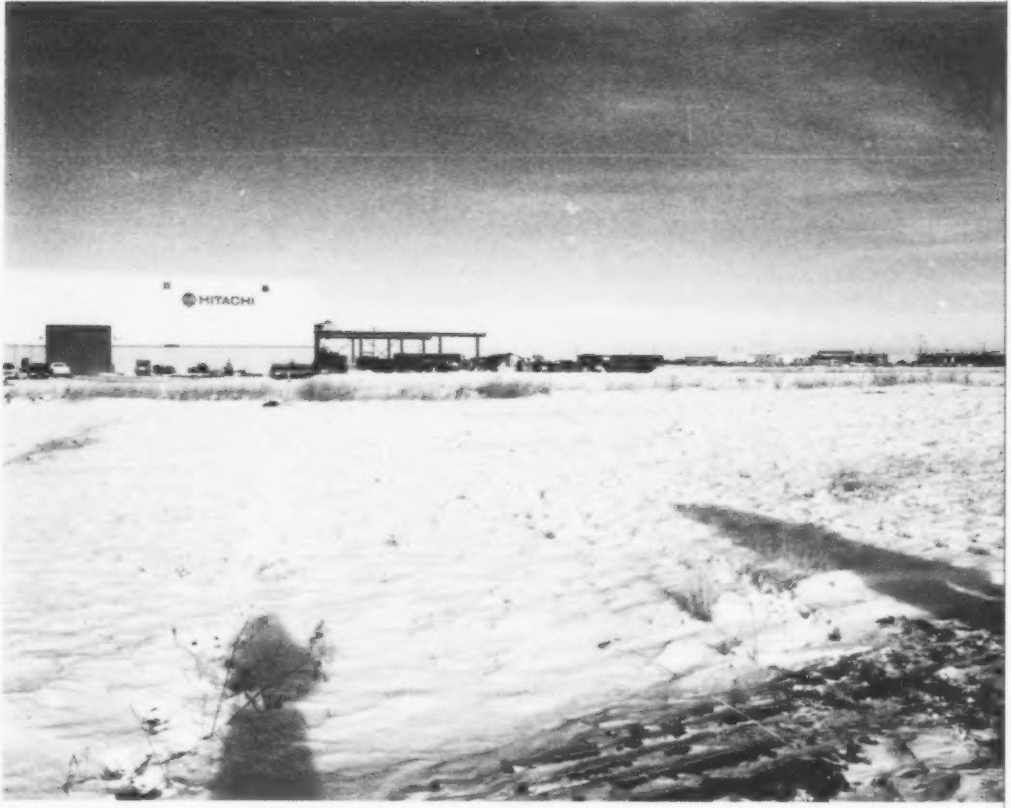
There were tattoos on the back of the right shoulder, on the outer aspect of the left upper arm, and over the thenar space of the dorsum of the right hand.

MICROSCOPIC DESCRIPTION

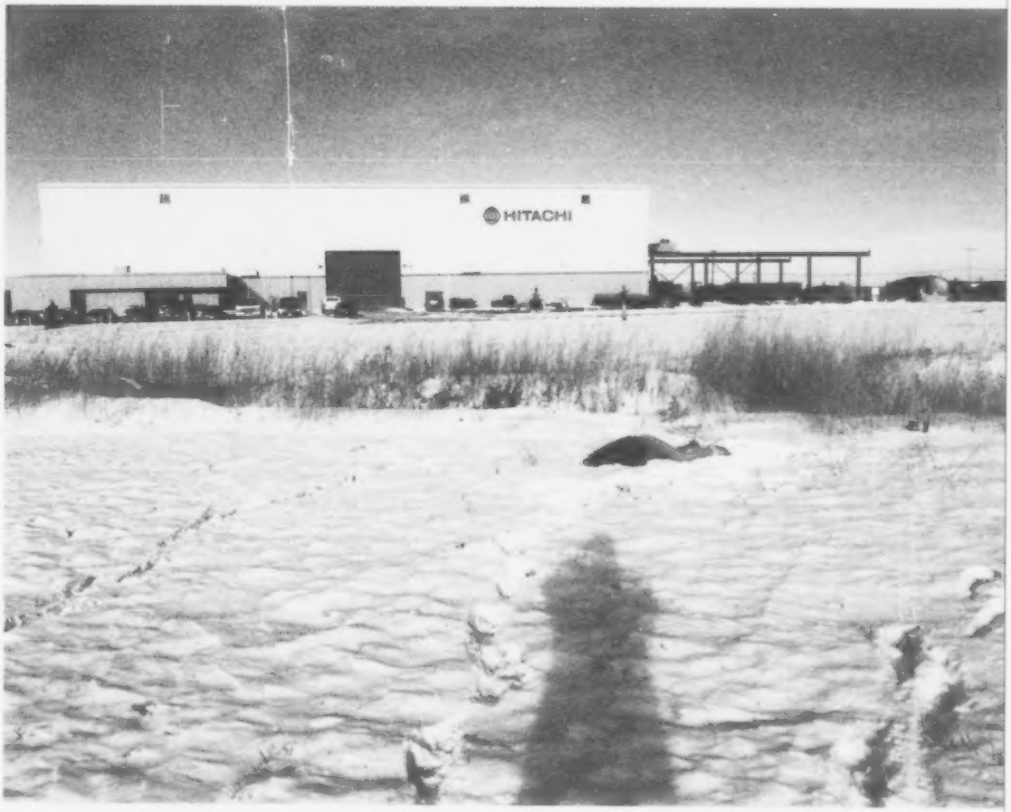
Sections were taken from all of the organs for microscopic examination. There was congestion and some edema of the lung. Autolysis was of a moderate degree in all of the organs. Veins in the pancreas were slightly distended by leukocytes.

Selected Photographs Taken at the Scene of Location of Body

Exhibit P-29



Selected Photographs Taken at the Scene of Location of Body
Exhibit P-29



Selected Photographs Taken at the Scene of Location of Body

Exhibit P-29

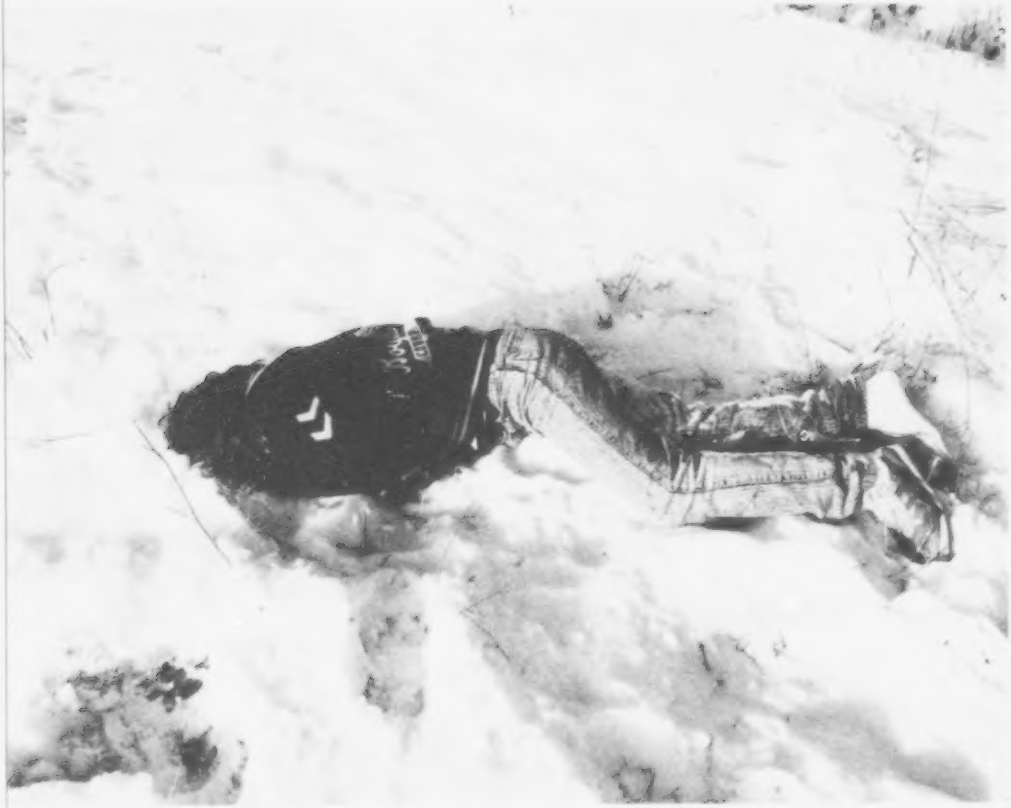


Exhibit P-28

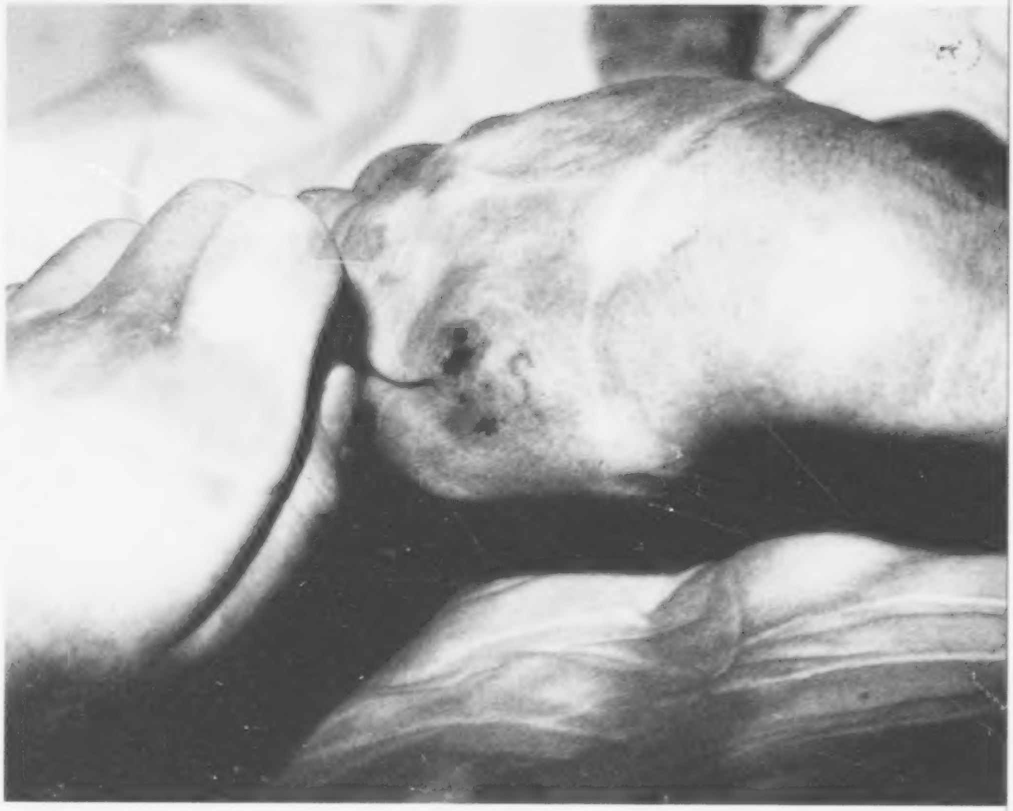
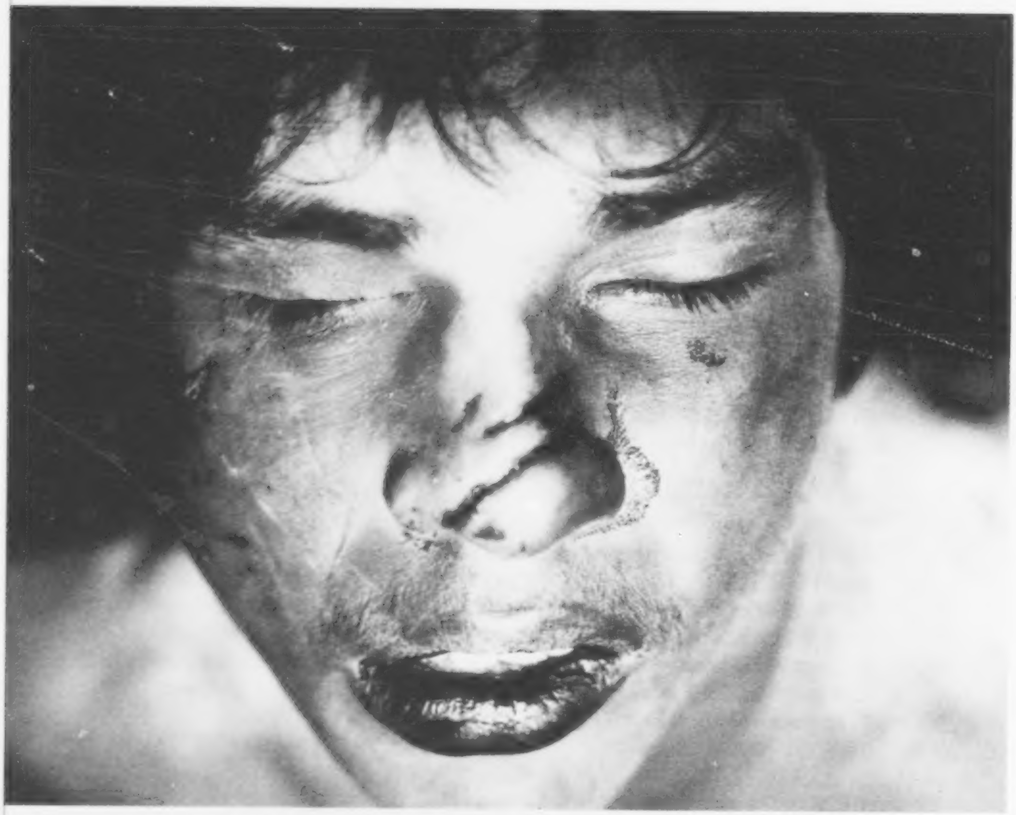


Exhibit P-28



Q
APPENDIX

Autopsy Report dated July 3, 2001 by Dr. Graeme Dowling
Exhibit P-31

TASK 1821
T.A 6813

Saskatchewan
Justice
JUL 09 2001
Coroners Branch

AUTOPSY REPORT

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

Examination performed in the Edmonton Medical Examiner's facility on April 24, 2001 commencing at 1315 hours and ending at 1545 hours. Dictated during the course of the examination and on the morning of April 25, 2001.

In the presence of Cpl. J. Warner, badge #32631 of the Regina RCMP Major Crimes Unit, a wooden casket is removed from cooler #2 of the Edmonton Medical Examiner's facility at 1315 hours on April 24, 2001. The wooden casket is opened, and is found to contain a smaller moist dirt-covered casket, with no lid, which is covered with a green plastic bag. The officers present inform me that the lid of this original casket was found to be damaged, at the time of the exhumation, such that it was removed. The remains of an adult human being are found within this smaller casket. The body is identified to me, by the officers present, as being that of Neil Christopher Stonechild, a 17-year-old Native Indian male.

Present during the course of the examination are:

Cpl. J. Warner, badge #32631, Regina RCMP Major Crimes Unit;
Insp. D. McFayden, badge #01545, Regina RCMP Criminal Operations Unit;
Sgt. S. Bowles, badge #30212, Regina RCMP Forensic Identification Section;
Dr. J. Nyssen, Chief Coroner, Province of Saskatchewan;
O. Beattie, University of Alberta Anthropologist;
C. Chan, Medical Examiner's Photographer/Radiology Technologist; and
P. McInnes, Medical Examiner's Pathology Technician.

PREAMBLE

This examination is an exhumation examination performed at the request of Dr. John Nyssen, Chief Coroner of the province of Saskatchewan, working in conjunction with the Saskatchewan RCMP.

Prior to my examination of the body, I am informed that this was a 17-year-old Native Indian male who was found dead in an industrial area in the north end of Saskatoon on the afternoon of November 29, 1990. The decedent was last seen alive, in a police vehicle, during the late evening or early morning hours of November 24/25, 1990 at the intersection of 33 Street and Confederation Drive in west Saskatoon. An autopsy

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

was performed by Dr. J. Adolf, at St. Paul's Hospital (Grey Nuns') of Saskatoon, commencing at 1230 hours on November 30, 1990. A copy of Dr. Adolf's autopsy report, dated January 30, 1991, is made available to me prior to my examination. The report indicates that the body was frozen, during the initial course of the examination, that there were small abrasions of the nose, the left cheek, the chest, and the knees, and that there were no other significant autopsy findings. The report also indicates that the postmortem blood alcohol concentration was 150 mg/100 ml.

I am also advised, by the officers present, that there is some investigative information available to suggest that the decedent was handcuffed by police at some point when he was last seen alive. I am shown photographs, taken during the course of the initial autopsy examination, which show a distinct band-like skin impression extending transversely across the extensor aspect of the right wrist and hand, which may have been produced by a handcuff. The photographs also show two small abrasions over the radial aspect of the right hand, around the metacarpophalangeal joint of the right thumb, which do not appear to be associated with the skin impression on the wrist. Finally, the photographs depict two parallel linear abrasions on the nose, which may have been produced by handcuffs.

I am further advised that this exhumation examination is being performed as part of an overall investigation into the circumstances surrounding the death of Neil Stonechild. Apart from any general examination findings, the police officers present are particularly interested in examination of the wrists (for soft tissue or bony injury), examination of the nose (for investigative allegations that blood was noted on the face of this individual when he was last seen alive), collection of fingernails for DNA hybridization, and collection of postmortem tissue for DNA hybridization.

EXTERNAL EXAMINATION

The body is lifted from the casket onto an examination table and complete postmortem x-rays are taken.

The body is clad in a dark-colored long-sleeve pullover sweater, a brown long-sleeve button-up shirt, blue denim pants, and white socks. There is no underwear or shoes present. A short segment of a yellow metal chain is found loosely on the anterior surface of the sweater, close to the wrists. A thin rusted wire, which measures 0.1 cm in diameter, is found loosely on the sweater, immediately adjacent to the chain. A partially disintegrated religious card, having a picture of Jesus on one side and the words of Psalm 23 on the other side, is also found loosely on the front of the sweater, in close association with the wrists. The wrists are crossed loosely over the front of the abdomen. A thin metal chain, with an attached small metal heart pendant, is found loosely on the sweater over the right lateral abdominal wall. An oxidized cross and dove pin is attached to the left breast region of the front of the sweater. An oxidized metal ring is present on the left 5th finger. The clothing is cut off, with portions of the clothing, particularly the blue denim pants, being in a state of fragmentation. The clothing closest to the skin, particularly the blue denim pants, are adherent to the skin such that they must be carefully peeled away. The clothing is discarded.

The body is that of an adolescent or adult human male. The decedent measures 171 cm in length and weighs 33 kg as received. There is generalized dark discoloration and desiccation of the skin with almost complete loss of skin over the lower extremities. Cephalic hair is abundant, is straight in character and is dark brown in color. The hair over the anterior half of the scalp measures 10 cm in maximum length, while that over the posterior half of the scalp is 16 cm in length. The difference in lengths appears to correspond roughly with the site of an autopsy incision made over the vertex of the scalp. The ears are desiccated. The orbits are sunken and contain desiccated tissue only. The nose is desiccated. Some granular material is present over the lower half of the face, particularly around the mouth. The jaws are wired shut, as part of the postmortem embalming procedure. Dentition is natural, with the exception of a dental bridge that replaces the right upper lateral incisor. The complete lower dentition is natural. The face and neck is desiccated. A "Y"-shaped autopsy incision extends from the points of the shoulders onto the sternum and down the midline of the anterior chest and abdomen to the symphysis pubis. External genitalia are those of a male. The lower extremities exhibit the most advanced degree of skin loss, moist decompositional change over the thighs, and desiccation of the remaining tissue. The upper extremities and the back exhibit postmortem desiccation only. Tattoos, over the extensor aspect of the right hand, the lateral aspect of the left arm below the shoulder, and the posterior surface of the right shoulder, described at the original autopsy examination, are no longer visible.

EVIDENCE OF INJURY

There is no x-ray evidence of antemortem bony injury. An autopsy bone saw cut is visible over the cranial vault. There is very slight deviation of the bony portion of the nasal septum to the left, but there is no x-ray evidence of a fresh bony fracture of the septum. The bones of the hands and wrists are intact.

Postmortem darkening and desiccation of the skin does not allow for proper examination for the presence or absence of injuries. Abrasions described over the bridge of the nose, over the left cheek, over the chest, and over the knees, at the original autopsy, are no longer identifiable. Desiccation of tissues of the wrists and hands does not permit identification of the skin impression noted on photographs at the initial autopsy examination. There is no obvious evidence of any antemortem injury that was not

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

described at the initial autopsy examination. Postmortem desiccation of the nose prevents a detailed examination, however upon incising the nostrils, there is no obvious evidence of injury to the dried nasal cartilage.

On internal examination, there is no evidence of injury to any of the organs preserved within the trunk cavity, to be described further below. The hyoid bone and thyroid cartilage are not present, such that they cannot be examined. The skull and visible portions of the ribs, the vertebral column, and the pelvis are all intact.

Trace Evidence

A head hair standard, complete fingernails from the right hand, complete fingernails from the left 1st, 2nd and 5th fingers, a complete fingernail found loose beneath the body, heart, liver, skin and muscle from the biceps region of the left arm, and a portion of the left 5th rib are all turned over to Cpl. Warner during the course of the examination.

INTERNAL EXAMINATION

The trunk cavity contains a green plastic bag, which, in turn, contains viscera examined at the previous autopsy. A small amount of fixative fluid is present within the bag, such that the organs can be identified and examined.

The heart weighs 275 g; the left lung weighs 510 g; the right lung weighs 595 g; the liver weighs 1,010 g; the spleen weighs 60 g; the left kidney weighs 110 g; the right kidney weighs 120 g; and the brain weighs 1,060 g. There are variable degrees of postmortem autolytic softening of each organ, together with some autolytic loss of anatomic structure. There is no gross evidence of any natural disease process that would account for death. In particular, there is no evidence of coronary artery disease, cardiac valvular disease, myocardial hypertrophy, emphysema, pulmonary consolidation, diffuse fatty change of the liver, cirrhosis, bowel inflammation, bowel perforation, gastric or duodenal ulceration, gastric perforation, subarachnoid hemorrhage, or intracerebral hemorrhage.

There are no residual tissues within the floor of the mouth, the neck, or the pelvis, such that an examination of the tongue, the trachea, the esophagus, the urinary bladder, or the prostate is not possible.

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

GRAEME P. DOWLING, M.D., F.R.C.P.(C)
CHIEF MEDICAL EXAMINER
GPD:dvd

July 3, 2001

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

HISTOLOGY

Representative sections of the central nervous system, heart, larynx, lungs, liver, thymus, spleen, kidneys, pancreas, thyroid, adrenals, and skeletal muscle, all collected during the course of the original autopsy examination, are made available to me.

There are variable degrees of congestion and early autolysis within the organs and tissues in each section. The lungs exhibit patchy edema, together with hemosiderin-laden macrophages in occasional alveoli. There is atrophy and fatty infiltration within the residual portions of the thymus. There is no histologic evidence of any injury or natural disease process to account for death.

GRAEME P. DOWLING, M.D., F.R.C.P.(C)
CHIEF MEDICAL EXAMINER
GPD:dvd

July 3, 2001

Autopsy Report dated July 3, 2001 by Dr. Graeme Dowling
Exhibit P-31

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

FINDINGS

1. Cold exposure with:

    (a) 17-year-old male found frozen in sub-zero temperature in an industrial area of Saskatoon on November 29, 1990.
    (b) Individual last documented as being alive on the late evening or early morning of November 24/25, 1990, in a police vehicle in west Saskatoon.
    (c) Initial autopsy performed on November 30, 1990.
    (d) Initial autopsy documenting parallel linear abrasions of nose and other small abrasions of left cheek, chest, and knees.
    (e) Initial autopsy photographs documenting skin impression on extensor aspect of right wrist, possibly caused by a handcuff (as per photograph comparisons by RCMP laboratory).
    (f) Parallel linear abrasions on nose possibly caused by handcuffs (as per photograph comparisons by RCMP laboratory).
    (g) No obvious injuries or natural disease processes identified at original autopsy to account for death.
    (h) Postmortem blood ethanol concentration 150 mg/100 ml.
    (i) No other drugs detected in postmortem blood collected at time of initial autopsy.
    (j) Initial cause of death attributed to hypothermia (i.e. cold exposure).
    (k) Exhumation examination of body performed at the Edmonton Medical Examiner's facility on April 24, 2001.
    (l) Advanced postmortem desiccation of skin and soft tissues, with postmortem loss of skin and underlying soft tissues over thighs.
    (m) Unable to identify minor external injuries, documented at the initial autopsy, due to degree of postmortem desiccation.
    (n) No evidence of injuries not identified at initial autopsy.
    (o) No evidence of fractures of nasal cartilage or nasal bone.
    (p) No evidence of bony injuries of wrists, where handcuffs may have been in place.
    (q) No natural disease processes identified to account for death.

CONCLUSIONS

This 17-year-old male was found dead, frozen in sub-zero temperatures, in an industrial area in the north end of Saskatoon on the afternoon of November 29, 1990. He was apparently last seen alive, by witnesses, during the late evening or early morning hours of November 24/25, 1990, in a police vehicle at an intersection in west Saskatoon.

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

Documentation of his whereabouts after this point in time was apparently lacking. It is alleged that witnesses saw blood on the face of the decedent when he was last seen alive.

A Coroner's autopsy was conducted on November 30, 1990. Two parallel linear scrapes (i.e. abrasions) were noted on the nose of the decedent, and additional small abrasions were found on the left cheek of his face, on his chest, and on his knees. No other injuries or natural disease processes were identified at the initial autopsy to account for death. Postmortem toxicology revealed the presence of a blood alcohol concentration of 150 mg/100 ml (as compared to the legally defined intoxicating level of alcohol, for the purpose of operating a motor vehicle, of 80 mg/100 ml), with no other intoxicating drugs identified. The cause of death was attributed to hypothermia (i.e. cold exposure).

A further investigation into the circumstances surrounding this individual's death was commenced by the RCMP in Saskatchewan in the year 2000. Review of photographs, taken during the course of the initial autopsy, revealed that the parallel linear abrasions noted on the nose could have been produced by a pair of handcuffs, and also noted the presence of a skin impression on the back of the right wrist, which could have been produced by handcuffs. In light of this, and other concerns raised by the investigation, an exhumation of the body was ordered by the Chief Coroner of the province of Saskatchewan. Re-examination of the body was performed at the Office of the Chief Medical Examiner in Edmonton on April 24, 2001.

The exhumed body exhibited an advanced degree of postmortem skin darkening and drying (i.e. desiccation), together with postmortem loss of skin and soft tissues primarily over the thighs of both legs. The abrasions identified at the initial autopsy could not be seen at the exhumation examination, as a result of these postmortem changes. No injuries were identified that had not been described at the initial autopsy examination. In particular, there was no visible evidence of any fracture of the cartilage or bone of the nose. Complete body x-rays failed to reveal the presence of any other bony fractures. No natural disease processes were identified upon re-examination of the relatively well preserved organs, contained within a bag with some embalming fluid in the trunk cavity, to account for death. Likewise, re-examination of the histology slides from the original autopsy failed to disclose any injury or natural disease process to account for death.

Although the scope of this examination was limited by the degree of postmortem change as outlined above, there was no evidence of any injury or other natural disease process to refute the original autopsy findings and conclusions.

RE: STONECHILD, Neil Christopher

Regina MCU #2000-2172

GRAEME P. DOWLING, M.D., F.R.C.P.(C)
CHIEF MEDICAL EXAMINER
GPD:dvd

July 3, 2001

Exhibit P-61

NEQUE TIMORE
NEQUE FAVORE

Saskatoon Police Service

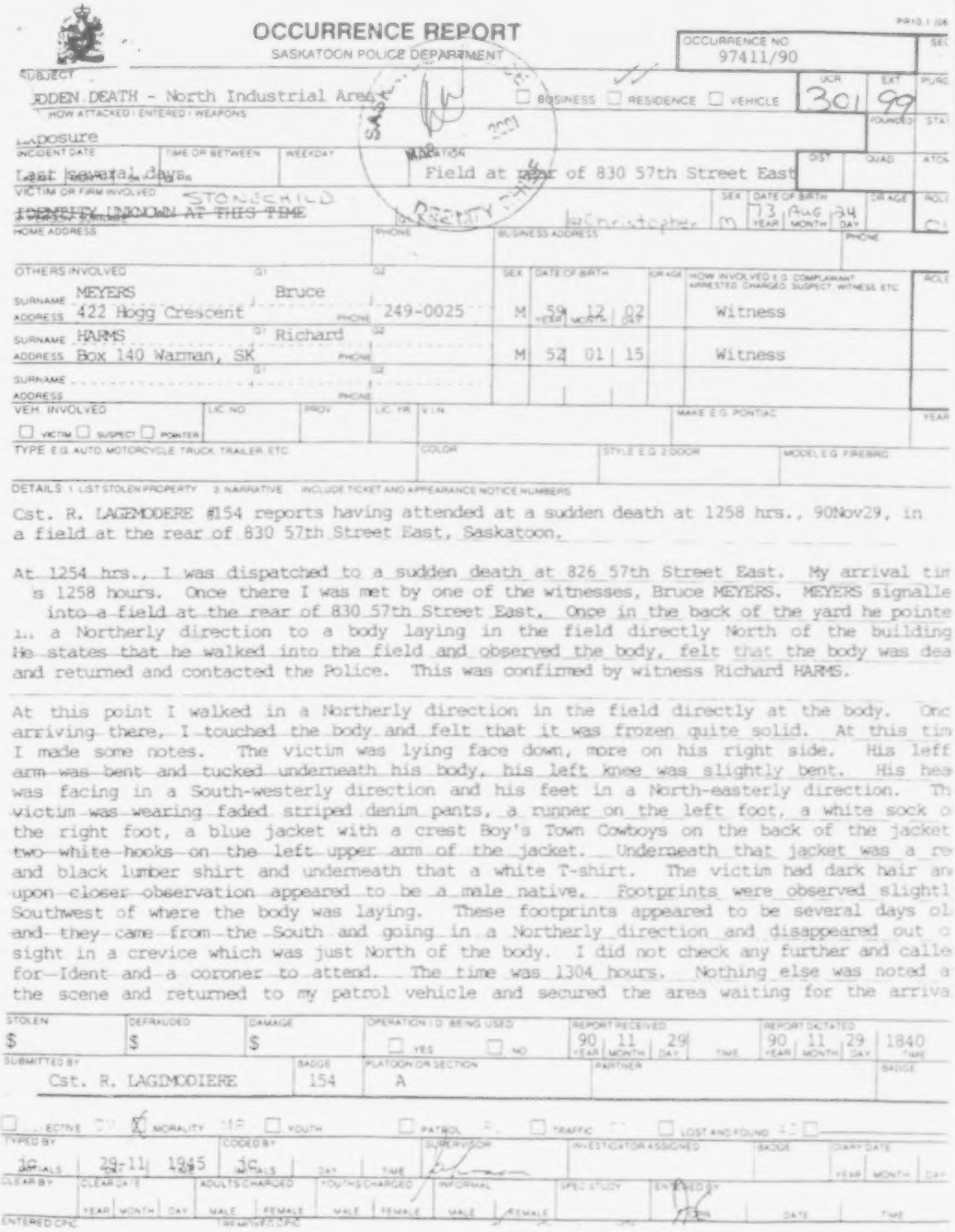
To:	A/Supt. M. Zoorkan Internal Investigations	Date:	March 20, 2001
From:	Dan Wiks Deputy Chief	Phone:	8250

RE: **Neil Stonechild Investigation**
Our file #90-97411

At 0930 hours Constable E. Louttit approached me advising that he had been going through his footlocker at his own residence and found a copy of the above-mentioned file. He turned over two copies of the file to me requesting that it be turned over to the R.C.M.P. for follow-up investigation.

DW/gf

Saskatoon Police Service Investigation File
Exhibit P-61



OCCURRENCE REPORT
SASKATOON POLICE DEPARTMENT

OCCURRENCE NO 97411/90

SUBJECT: ~~S~~UDDEN DEATH - North Industrial Area
☐ BUSINESS ☐ RESIDENCE ☐ VEHICLE
UCR 301 EXT 99

HOW ATTACKED / ENTERED / WEAPONS: Exposure

INCIDENT DATE: Last several days.
LOCATION: Field at rear of 830 57th Street East

VICTIM OR FIRM INVOLVED: STONECHILD ~~IDENTITY UNKNOWN AT THIS TIME~~
G1 Neil G2 Christopher
SEX m DATE OF BIRTH 73 Aug 24 (YEAR MONTH DAY)

SASK. 2001 RCMP

HOME ADDRESS
PHONE
BUSINESS ADDRESS
PHONE

OTHERS INVOLVED

SURNAME / ADDRESS	G1	PHONE	SEX	DATE OF BIRTH (YEAR MONTH DAY)	HOW INVOLVED
MEYERS 422 Hogg Crescent	Bruce	249-0025	M	59 12 02	Witness
HARMS Box 140 Warman, SK	Richard		M	52 01 15	Witness

VEH. INVOLVED ☐ VICTIM ☐ SUSPECT ☐ POINTER LIC. NO PROV LIC. YR. V.I.N. MAKE E.G. PONTIAC YEAR
TYPE E.G. AUTO, MOTORCYCLE, TRUCK, TRAILER, ETC. COLOR STYLE E.G. 2 DOOR MODEL E.G. FIREBIRD

DETAILS 1. LIST STOLEN PROPERTY 2. NARRATIVE INCLUDE TICKET AND APPEARANCE NOTICE NUMBERS

Cst. R. LAGEMODERE #154 reports having attended at a sudden death at 1258 hrs., 90Nov29, in a field at the rear of 830 57th Street East, Saskatoon.

At 1254 hrs., I was dispatched to a sudden death at 826 57th Street East. My arrival tim
s 1258 hours. Once there I was met by one of the witnesses, Bruce MEYERS. MEYERS signalle
into a field at the rear of 830 57th Street East. Once in the back of the yard he pointe
in a Northerly direction to a body laying in the field directly North of the building
He states that he walked into the field and observed the body, felt that the body was dea
and returned and contacted the Police. This was confirmed by witness Richard HARMS.

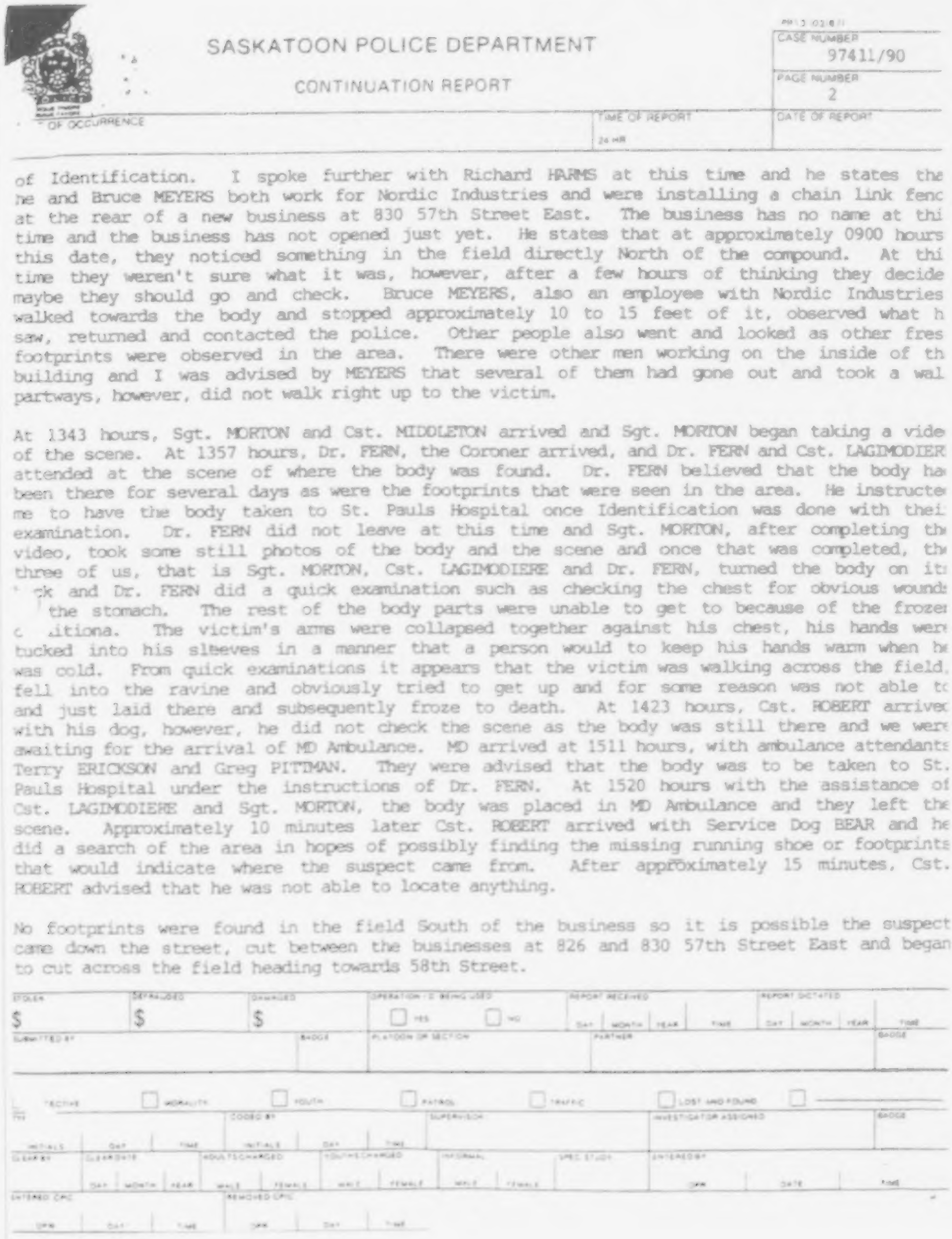
At this point I walked in a Northerly direction in the field directly at the body. Onc
arriving there, I touched the body and felt that it was frozen quite solid. At this tim
I made some notes. The victim was lying face down, more on his right side. His lef
arm was bent and tucked underneath his body, his left knee was slightly bent. His hea
was facing in a South-westerly direction and his feet in a North-easterly direction. Th
victim was wearing faded striped denim pants, a runner on the left foot, a white sock o
the right foot, a blue jacket with a crest Boy's Town Cowboys on the back of the jacket
two white hooks on the left upper arm of the jacket. Underneath that jacket was a re
and black lumber shirt and underneath that a white T-shirt. The victim had dark hair an
upon closer observation appeared to be a male native. Footprints were observed slightl
Southwest of where the body was laying. These footprints appeared to be several days ol
and they came from the South and going in a Northerly direction and disappeared out o
sight in a crevice which was just North of the body. I did not check any further and calle
for Ident and a coroner to attend. The time was 1304 hours. Nothing else was noted a
the scene and returned to my patrol vehicle and secured the area waiting for the arriva

STOLEN $ DEFRAUDED $ DAMAGE $
OPERATION I.D. BEING USED ☐ YES ☐ NO
REPORT RECEIVED 90 11 29 (YEAR MONTH DAY) TIME
REPORT DICTATED 90 11 29 (YEAR MONTH DAY) 1840 TIME

SUBMITTED BY Cst. R. LAGIMODIERE BADGE 154 PLATOON OR SECTION A PARTNER BADGE

☐ DETECTIVE ☒ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYPED BY jc (INITIALS) 29-11 (DAY) 1945 (TIME) CODED BY jc (INITIALS) DAY TIME SUPERVISOR INVESTIGATOR ASSIGNED BADGE DIARY DATE YEAR MONTH DAY
CLEAR BY CLEAR DATE YEAR MONTH DAY ADULTS CHARGED MALE FEMALE YOUTHS CHARGED MALE FEMALE INFORMAL MALE FEMALE SPEC STUDY ENTERED BY DATE TIME
ENTERED CPIC REMOVED CPIC



SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

OF OCCURRENCE	TIME OF REPORT 24 HR	CASE NUMBER 97411/90 PAGE NUMBER 2 DATE OF REPORT

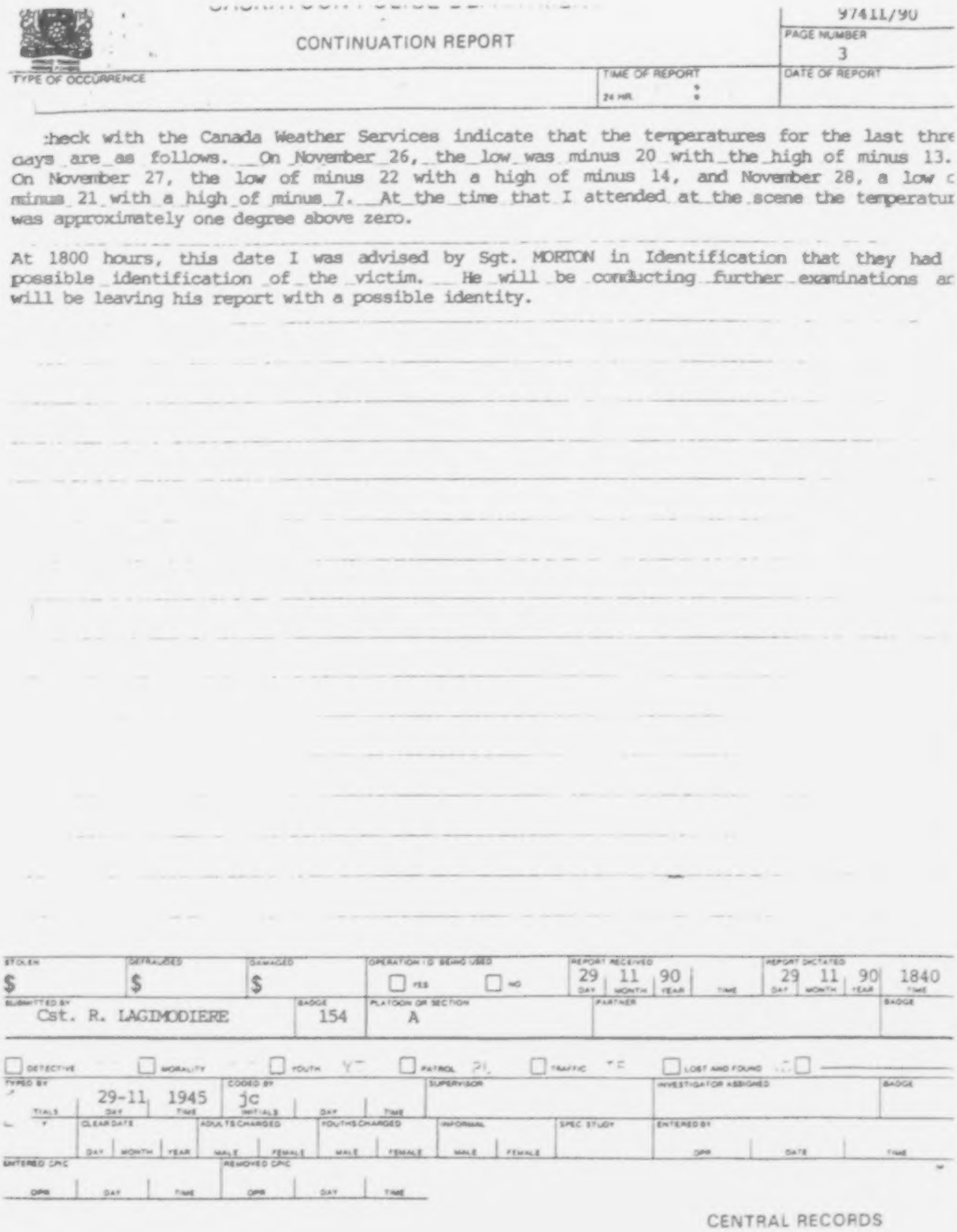
of Identification. I spoke further with Richard HARMS at this time and he states tha he and Bruce MEYERS both work for Nordic Industries and were installing a chain link fenc at the rear of a new business at 830 57th Street East. The business has no name at thi time and the business has not opened just yet. He states that at approximately 0900 hours this date, they noticed something in the field directly North of the compound. At thi time they weren't sure what it was, however, after a few hours of thinking they decide maybe they should go and check. Bruce MEYERS, also an employee with Nordic Industries walked towards the body and stopped approximately 10 to 15 feet of it, observed what h saw, returned and contacted the police. Other people also went and looked as other fres footprints were observed in the area. There were other men working on the inside of th building and I was advised by MEYERS that several of them had gone out and took a wal partways, however, did not walk right up to the victim.

At 1343 hours, Sgt. MORTON and Cst. MIDDLETON arrived and Sgt. MORTON began taking a vide of the scene. At 1357 hours, Dr. FERN, the Coroner arrived, and Dr. FERN and Cst. LAGIMODIER attended at the scene of where the body was found. Dr. FERN believed that the body ha been there for several days as were the footprints that were seen in the area. He instructe me to have the body taken to St. Pauls Hospital once Identification was done with thei examination. Dr. FERN did not leave at this time and Sgt. MORTON, after completing th video, took some still photos of the body and the scene and once that was completed, th three of us, that is Sgt. MORTON, Cst. LAGIMODIERE and Dr. FERN, turned the body on it ck and Dr. FERN did a quick examination such as checking the chest for obvious wound the stomach. The rest of the body parts were unable to get to because of the froze c ditiona. The victim's arms were collapsed together against his chest, his hands wer tucked into his sleeves in a manner that a person would to keep his hands warm when h was cold. From quick examinations it appears that the victim was walking across the field, fell into the ravine and obviously tried to get up and for some reason was not able t and just laid there and subsequently froze to death. At 1423 hours, Cst. ROBERT arrive with his dog, however, he did not check the scene as the body was still there and we wer awaiting for the arrival of MD Ambulance. MD arrived at 1511 hours, with ambulance attendant Terry ERICKSON and Greg PITTMAN. They were advised that the body was to be taken to St. Pauls Hospital under the instructions of Dr. FERN. At 1520 hours with the assistance o Cst. LAGIMODIERE and Sgt. MORTON, the body was placed in MD Ambulance and they left th scene. Approximately 10 minutes later Cst. ROBERT arrived with Service Dog BEAR and h did a search of the area in hopes of possibly finding the missing running shoe or footprint that would indicate where the suspect came from. After approximately 15 minutes, Cst. ROBERT advised that he was not able to locate anything.

No footprints were found in the field South of the business so it is possible the suspect came down the street, cut between the businesses at 826 and 830 57th Street East and began to cut across the field heading towards 58th Street.

STOLEN $	DEFRAUDED $	DAMAGED $	OPERATION I.D. BEING USED ☐ YES ☐ NO	REPORT RECEIVED DAY | MONTH | YEAR | TIME	REPORT DICTATED DAY | MONTH | YEAR | TIME
SUBMITTED BY	BADGE	PLATOON OR SECTION	PARTNER		BADGE

TECTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐



97411/90

CONTINUATION REPORT

PAGE NUMBER 3

TYPE OF OCCURRENCE

TIME OF REPORT 24 HR. :

DATE OF REPORT

check with the Canada Weather Services indicate that the temperatures for the last thre days are as follows. On November 26, the low was minus 20 with the high of minus 13. On November 27, the low of minus 22 with a high of minus 14, and November 28, a low c minus 21 with a high of minus 7. At the time that I attended at the scene the temperatur was approximately one degree above zero.

At 1800 hours, this date I was advised by Sgt. MORTON in Identification that they had possible identification of the victim. He will be conducting further examinations ar will be leaving his report with a possible identity.

STOLEN $	DEFRAUDED $	DAMAGED $	OPERATION I.D. BEING USED ☐ YES ☐ NO	REPORT RECEIVED 29 DAY 11 MONTH 90 YEAR TIME	REPORT DICTATED 29 DAY 11 MONTH 90 YEAR 1840 TIME
SUBMITTED BY Cst. R. LAGIMODIERE	BADGE 154	PLATOON OR SECTION A	PARTNER		BADGE

☐ DETECTIVE ☐ MORALITY ☐ YOUTH YT ☐ PATROL PL ☐ TRAFFIC TF ☐ LOST AND FOUND ☐

TYPED BY INITIALS 29-11 DAY 1945 TIME

CODED BY jc INITIALS DAY TIME

SUPERVISOR

INVESTIGATOR ASSIGNED

BADGE

CLEAR DATE DAY MONTH YEAR

ADULTS CHARGED MALE FEMALE

YOUTHS CHARGED MALE FEMALE

INFORMAL MALE FEMALE

SPEC STUDY

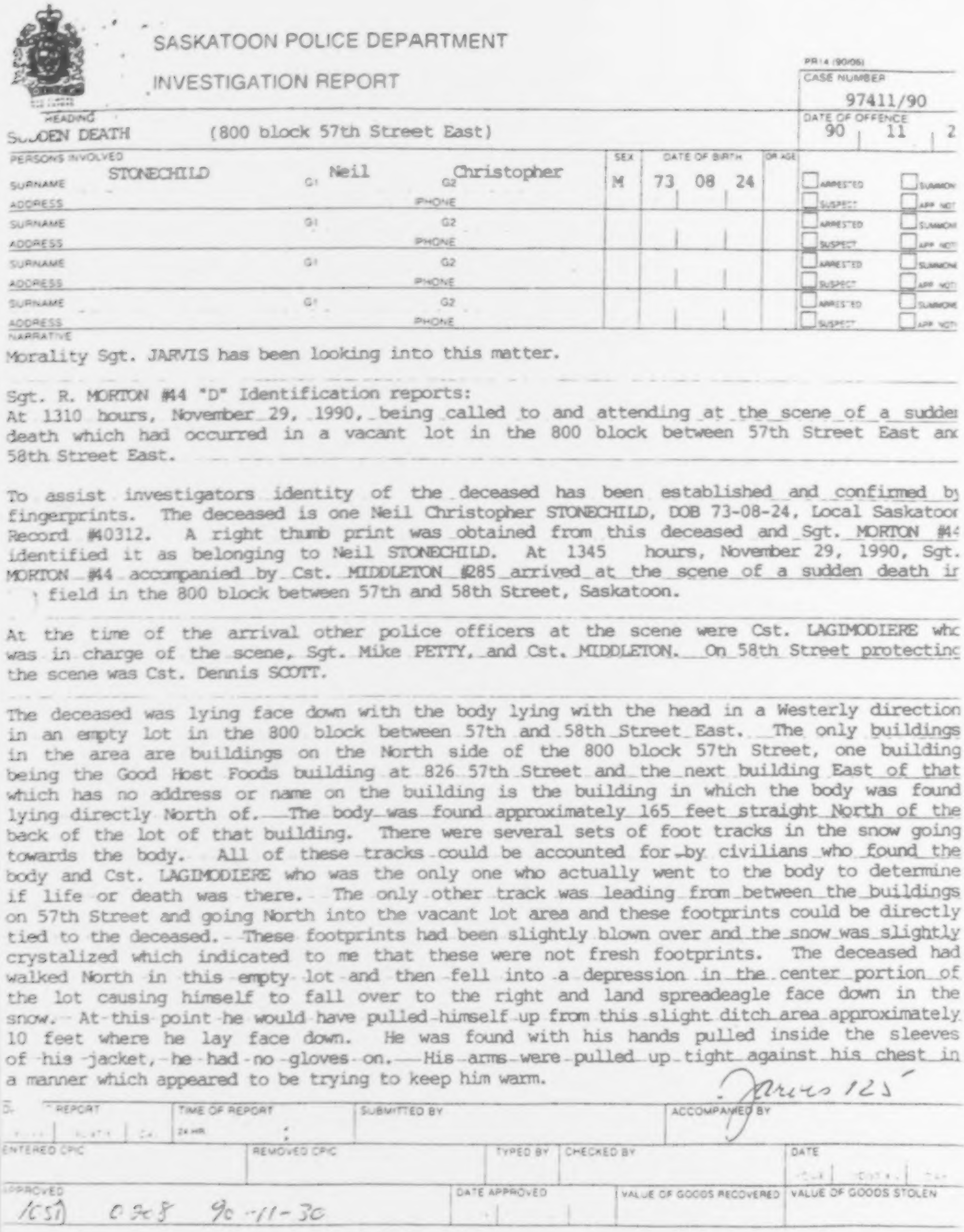
ENTERED BY OPR DATE TIME

ENTERED CPIC OPR DAY TIME

REMOVED CPIC OPR DAY TIME

CENTRAL RECORDS

Exhibit P-61



SASKATOON POLICE DEPARTMENT

INVESTIGATION REPORT

PR14 (90/06)

CASE NUMBER 97411/90

HEADING: SUDDEN DEATH (800 block 57th Street East)

DATE OF OFFENCE: 90 | 11 | 2

PERSONS INVOLVED

				SEX	DATE OF BIRTH	OR AGE		
SURNAME	STONECHILD	G1 Neil	G2 Christopher	M	73 08 24		☐ ARRESTED	☐ SUMMON
ADDRESS			PHONE				☐ SUSPECT	☐ APP NOT
SURNAME		G1	G2				☐ ARRESTED	☐ SUMMON
ADDRESS			PHONE				☐ SUSPECT	☐ APP NOT
SURNAME		G1	G2				☐ ARRESTED	☐ SUMMON
ADDRESS			PHONE				☐ SUSPECT	☐ APP NOT
SURNAME		G1	G2				☐ ARRESTED	☐ SUMMON
ADDRESS			PHONE				☐ SUSPECT	☐ APP NOT

NARRATIVE

Morality Sgt. JARVIS has been looking into this matter.

Sgt. R. MORTON #44 "D" Identification reports:
At 1310 hours, November 29, 1990, being called to and attending at the scene of a sudde death which had occurred in a vacant lot in the 800 block between 57th Street East an 58th Street East.

To assist investigators identity of the deceased has been established and confirmed b fingerprints. The deceased is one Neil Christopher STONECHILD, DOB 73-08-24, Local Saskatoo Record #40312. A right thumb print was obtained from this deceased and Sgt. MORTON #4 identified it as belonging to Neil STONECHILD. At 1345 hours, November 29, 1990, Sgt. MORTON #44 accompanied by Cst. MIDDLETON #285 arrived at the scene of a sudden death i field in the 800 block between 57th and 58th Street, Saskatoon.

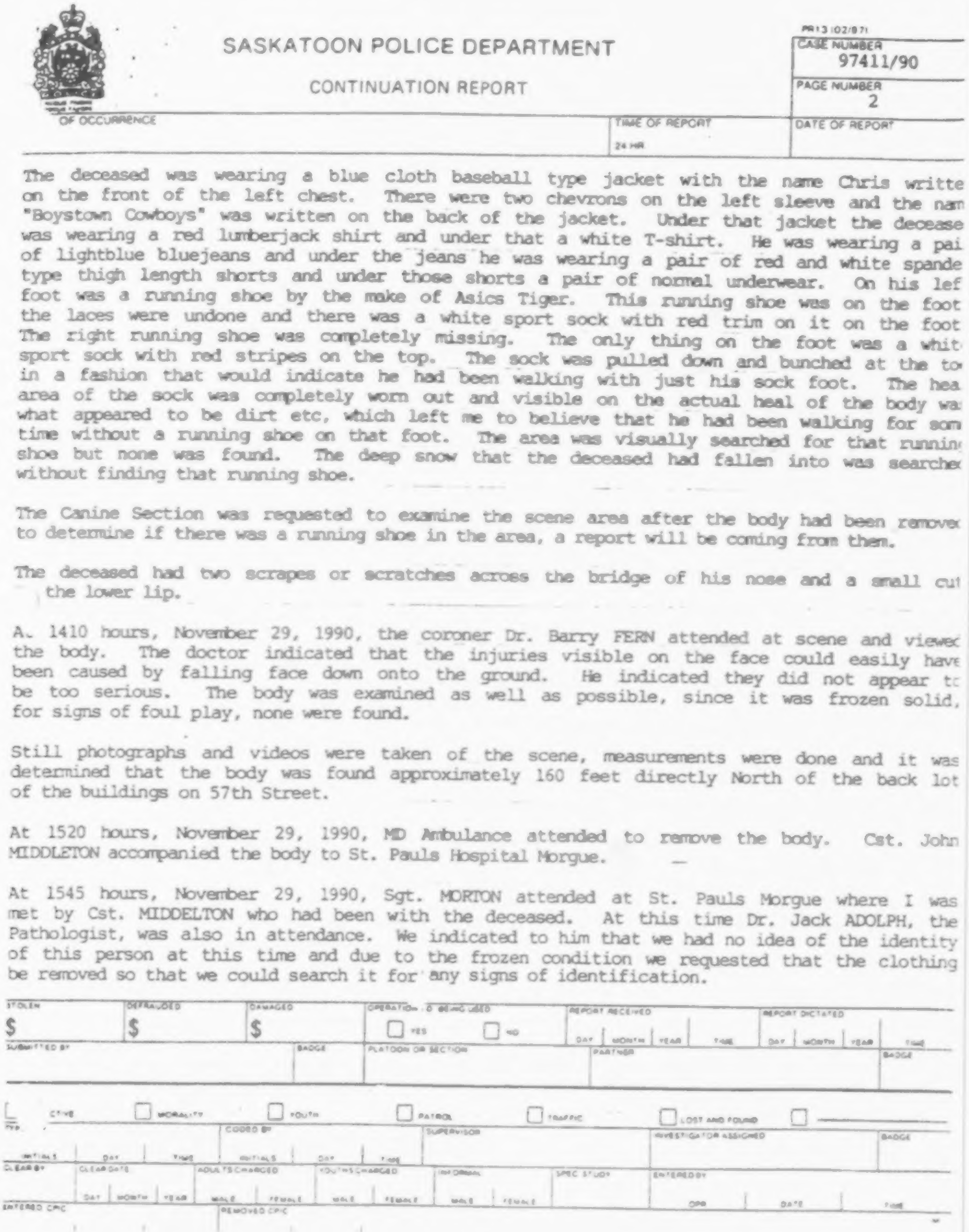
At the time of the arrival other police officers at the scene were Cst. LAGIMODIERE wh was in charge of the scene, Sgt. Mike PETTY, and Cst. MIDDLETON. On 58th Street protectin the scene was Cst. Dennis SCOTT.

The deceased was lying face down with the body lying with the head in a Westerly direction in an empty lot in the 800 block between 57th and 58th Street East. The only buildings in the area are buildings on the North side of the 800 block 57th Street, one building being the Good Host Foods building at 826 57th Street and the next building East of that which has no address or name on the building is the building in which the body was found lying directly North of. The body was found approximately 165 feet straight North of the back of the lot of that building. There were several sets of foot tracks in the snow going towards the body. All of these tracks could be accounted for by civilians who found the body and Cst. LAGIMODIERE who was the only one who actually went to the body to determine if life or death was there. The only other track was leading from between the buildings on 57th Street and going North into the vacant lot area and these footprints could be directly tied to the deceased. These footprints had been slightly blown over and the snow was slightly crystalized which indicated to me that these were not fresh footprints. The deceased had walked North in this empty lot and then fell into a depression in the center portion of the lot causing himself to fall over to the right and land spreadeagle face down in the snow. At this point he would have pulled himself up from this slight ditch area approximately 10 feet where he lay face down. He was found with his hands pulled inside the sleeves of his jacket, he had no gloves on. His arms were pulled up tight against his chest in a manner which appeared to be trying to keep him warm.

Jarvis 125

DATE OF REPORT	TIME OF REPORT 24 HR	SUBMITTED BY	ACCOMPANIED BY
ENTERED CPIC	REMOVED CPIC	TYPED BY / CHECKED BY	DATE
APPROVED 1051 0908 90-11-30	DATE APPROVED	VALUE OF GOODS RECOVERED	VALUE OF GOODS STOLEN

Saskatoon Police Service Investigation File
Exhibit P-61



PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

		CASE NUMBER 97411/90
		PAGE NUMBER 2
OF OCCURRENCE	TIME OF REPORT 24 HR	DATE OF REPORT

The deceased was wearing a blue cloth baseball type jacket with the name Chris writte on the front of the left chest. There were two chevrons on the left sleeve and the nam "Boystown Cowboys" was written on the back of the jacket. Under that jacket the decease was wearing a red lumberjack shirt and under that a white T-shirt. He was wearing a pai of lightblue bluejeans and under the jeans he was wearing a pair of red and white spande type thigh length shorts and under those shorts a pair of normal underwear. On his lef foot was a running shoe by the make of Asics Tiger. This running shoe was on the foot the laces were undone and there was a white sport sock with red trim on it on the foot The right running shoe was completely missing. The only thing on the foot was a whit sport sock with red stripes on the top. The sock was pulled down and bunched at the to in a fashion that would indicate he had been walking with just his sock foot. The hea area of the sock was completely worn out and visible on the actual heal of the body wa what appeared to be dirt etc, which left me to believe that he had been walking for som time without a running shoe on that foot. The area was visually searched for that runnin shoe but none was found. The deep snow that the deceased had fallen into was searche without finding that running shoe.

The Canine Section was requested to examine the scene area after the body had been remove to determine if there was a running shoe in the area, a report will be coming from them.

The deceased had two scrapes or scratches across the bridge of his nose and a small cu the lower lip.

A. 1410 hours, November 29, 1990, the coroner Dr. Barry FERN attended at scene and viewe the body. The doctor indicated that the injuries visible on the face could easily hav been caused by falling face down onto the ground. He indicated they did not appear t be too serious. The body was examined as well as possible, since it was frozen solid, for signs of foul play, none were found.

Still photographs and videos were taken of the scene, measurements were done and it was determined that the body was found approximately 160 feet directly North of the back lot of the buildings on 57th Street.

At 1520 hours, November 29, 1990, MD Ambulance attended to remove the body. Cst. John MIDDLETON accompanied the body to St. Pauls Hospital Morgue.

At 1545 hours, November 29, 1990, Sgt. MORTON attended at St. Pauls Morgue where I was met by Cst. MIDDELTON who had been with the deceased. At this time Dr. Jack ADOLPH, the Pathologist, was also in attendance. We indicated to him that we had no idea of the identity of this person at this time and due to the frozen condition we requested that the clothing be removed so that we could search it for any signs of identification.

STOLEN $	DEFRAUDED $	DAMAGED $	OPERATION ID BEING USED ☐ YES ☐ NO	REPORT RECEIVED DAY MONTH YEAR TIME	REPORT DICTATED DAY MONTH YEAR TIME
SUBMITTED BY	BADGE	PLATOON OR SECTION	PARTNER		BADGE

☐ CTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYP. INITIALS DAY TIME	CODED BY INITIALS DAY TIME	SUPERVISOR				INVESTIGATOR ASSIGNED		BADGE
CLEAR BY	CLEAR DATE DAY MONTH YEAR	ADULTS CHARGED MALE FEMALE	YOUTHS CHARGED MALE FEMALE	INFORMAL MALE FEMALE	SPEC STUDY	ENTERED BY OPR DATE TIME		
ENTERED CPIC	REMOVED CPIC							

PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

OF OCCURRENCE	TIME OF REPORT 24 HR	CASE NUMBER 97411/90	PAGE NUMBER 3
		DATE OF REPORT	

In the right rear pocket of the deceased's bluejeans were some pictures and papers. Th papers had phone numbers on them. The phone numbers are 382-0239, 382-3665 and one pictur was a color photograph of a female saying on the back, To Neil from cousin Lucille NEETZ There were other color photographs in there indicating that the photographs were bein addressed to a person by the name of Neil. Found in the breast pocket of the red lumbe jacket was a vial containing some cologne called Hero Cologne. Nothing else was foun on the body. A stone was found to be in the left running and it looked like he'd bee on it for some while as there was a noticeable depression into the foot. The decease was observed to have the following tattoos on his body. At the base of the right thum were the initials N.S. On the left forearm were initials which looked to be R somethin N. On the back of the right shoulder was an approximately 4 inch long tattoo with a ribbon a heart and initial B, not sure what this tattoo was, it was not identifiable from lookin at it.

At 1630 hours, November 29, 1990, Sgt. MORTON seized from the deceased the blue jacket, his red lumberjacket and T-shirt, both socks and the running shoe. Also seized were the papers and the vial of cologne. The bluejeans, the spandex type shorts and the underwear shorts had to be left with the body as the body was so frozen it was impossible to remove them at that time.

At 1630 hours, November 29, 1990, through MORTON Cst. MIDDLETON cleared the St. Pauls Morgue. Jack ADOLPH advised the body would be locked in that room while it thawed and that 1 it Section would be notified when the post mortem would be able to be performed.

Returning to the Police Station Cst. John MIDDLETON #285 using the information of the tattoos on this deceased "NS" searched the identification card system for anybody with the last name starting with S and a first name of Neil. Cst. MIDDLETON came up with the name Neil Christopher STONECHILD, pulled the record and photographs and from the description of the tattooing, it was determined that this would be a good possible identity for this deceased. Cst. MIDDLETON should be congratulated on his initiative and ingenuity.

At 2010 hours, November 29, 1990, Sgt. R. MORTON #44, and investigator Keith JARVIS attended at the St. Pauls Hospital Morgue where the morgue was opened by Nursing Supervisor Ann KORCHINSKI. Sgt. MORTON obtained a right thumb print from the deceased and identified it to Neil Christopher STONECHILD, DOB 73-08-24, with a Local Record of #40312.

At 2020 hours, November 29, 1990, Sgt. MORTON cleared St. Pauls Hospital.

All information pertaining to this case has been turned over to Sgt. JARVIS for purposes of notifying next of kin and trying to determine why this individual would have been out into that basically remote business area of town. Copy should be forwarded to Ident.

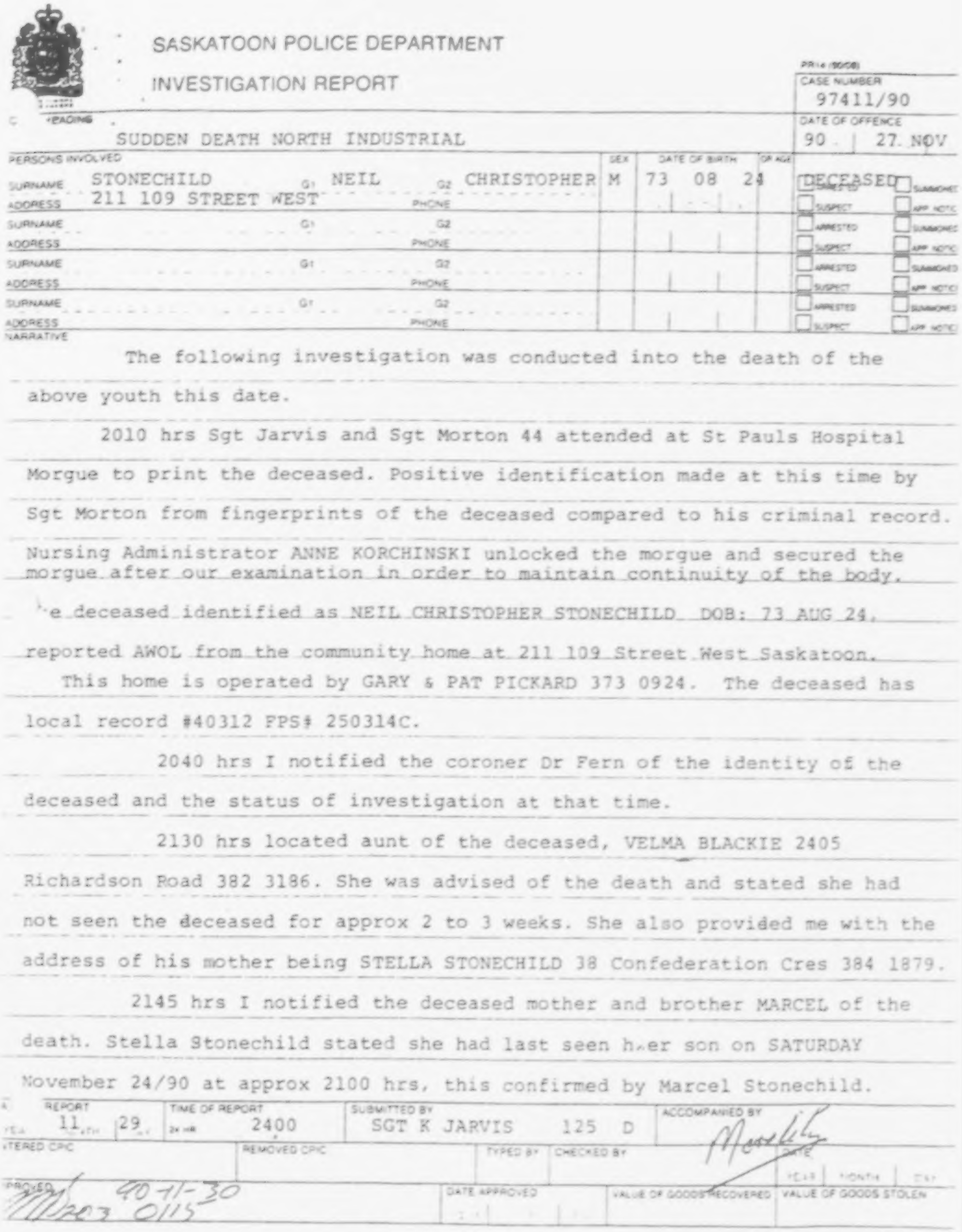
STOLEN $	DEFRAUDED $	DAMAGED $	OPERATION I.D. BEING USED ☐ YES ☐ NO	REPORT RECEIVED 29 DAY | 11 MONTH | 90 YEAR | 2055 TIME	REPORT DICTATED DAY | MONTH | YEAR | TIME
SUBMITTED BY Sgt. R. MORTON	BADGE 44	PLATOON OR SECTION D Ident	PARTNER		BADGE

☐ CTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐ ____________

TYPED BY jc INITIALS | 30 DAY | 0120 TIME	CODED BY INITIALS | DAY | TIME	SUPERVISOR	INVESTIGATOR ASSIGNED	BADGE
CLEAR BY	CLEAR DATE DAY | MONTH | YEAR	ADULTS CHARGED MALE | FEMALE	YOUTHS CHARGED MALE | FEMALE	INFORMAL MALE | FEMALE
SPEC. STUDY	ENTERED BY OPR | DATE | TIME			

ENTERED CPIC
REMOVED CPIC

Saskatoon Police Service Investigation File
Exhibit P-61



SASKATOON POLICE DEPARTMENT

INVESTIGATION REPORT

PR14 (90/08)

CASE NUMBER 97411/90

HEADING SUDDEN DEATH NORTH INDUSTRIAL

DATE OF OFFENCE 90 | 27 NOV

PERSONS INVOLVED

SURNAME STONECHILD	G1 NEIL	G2 CHRISTOPHER	SEX M	DATE OF BIRTH 73 08 24	DECEASED
ADDRESS 211 109 STREET WEST	PHONE				☐ SUSPECT ☐ APP NOTIC
SURNAME	G1	G2			☐ ARRESTED ☐ SUMMONED
ADDRESS	PHONE				☐ SUSPECT ☐ APP NOTIC
SURNAME	G1	G2			☐ ARRESTED ☐ SUMMONED
ADDRESS	PHONE				☐ SUSPECT ☐ APP NOTIC
SURNAME	G1	G2			☐ ARRESTED ☐ SUMMONED
ADDRESS	PHONE				☐ SUSPECT ☐ APP NOTIC

NARRATIVE

The following investigation was conducted into the death of the above youth this date.

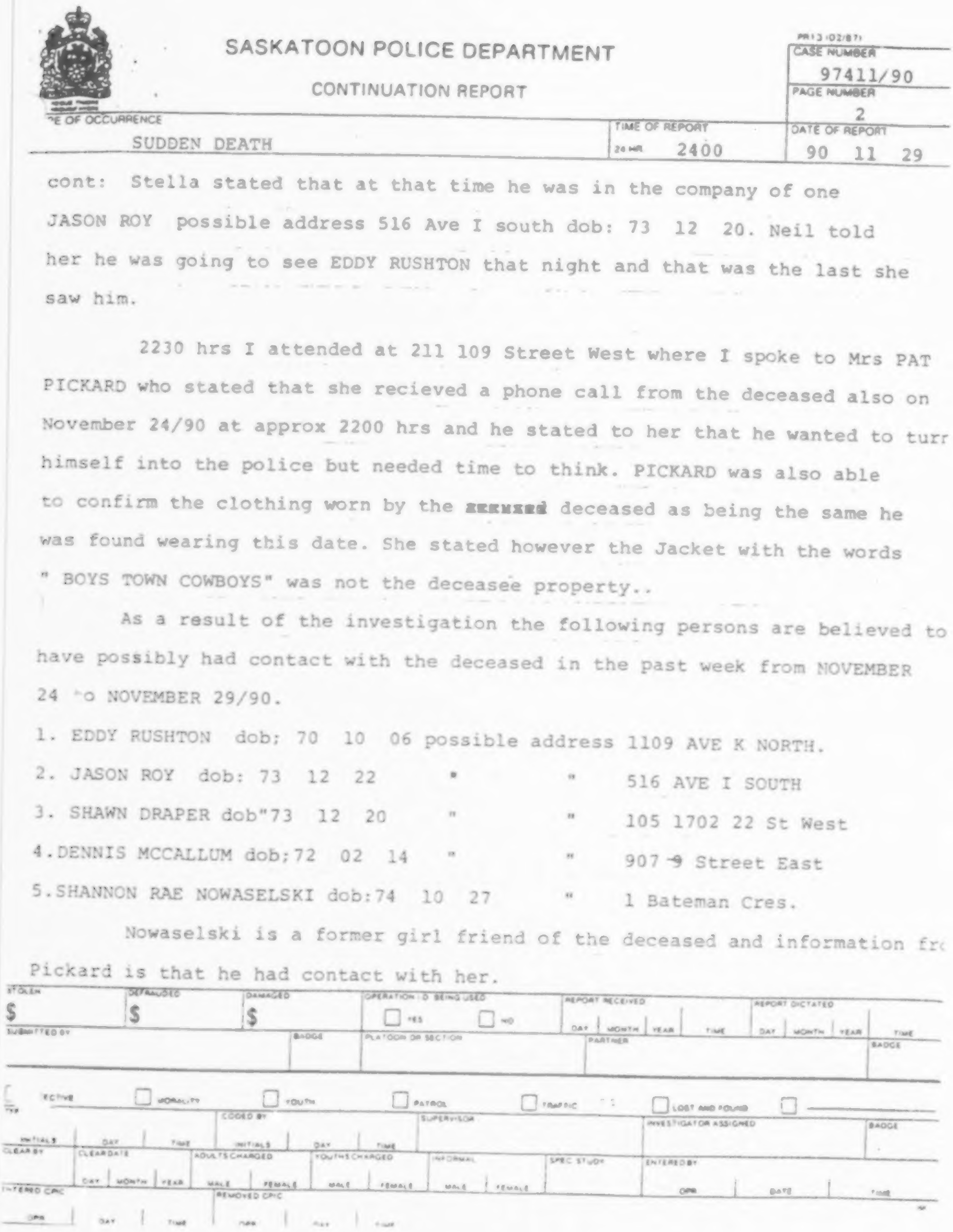
2010 hrs Sgt Jarvis and Sgt Morton 44 attended at St Pauls Hospital Morgue to print the deceased. Positive identification made at this time by Sgt Morton from fingerprints of the deceased compared to his criminal record. Nursing Administrator ANNE KORCHINSKI unlocked the morgue and secured the morgue after our examination in order to maintain continuity of the body. e deceased identified as NEIL CHRISTOPHER STONECHILD DOB: 73 AUG 24, reported AWOL from the community home at 211 109 Street West Saskatoon. This home is operated by GARY & PAT PICKARD 373 0924. The deceased has local record #40312 FPS# 250314C.

2040 hrs I notified the coroner Dr Fern of the identity of the deceased and the status of investigation at that time.

2130 hrs located aunt of the deceased, VELMA BLACKIE 2405 Richardson Road 382 3186. She was advised of the death and stated she had not seen the deceased for approx 2 to 3 weeks. She also provided me with the address of his mother being STELLA STONECHILD 38 Confederation Cres 384 1879.

2145 hrs I notified the deceased mother and brother MARCEL of the death. Stella Stonechild stated she had last seen her son on SATURDAY November 24/90 at approx 2100 hrs, this confirmed by Marcel Stonechild.

REPORT 11 29	TIME OF REPORT 2400	SUBMITTED BY SGT K JARVIS 125 D	ACCOMPANIED BY
ENTERED CPIC	REMOVED CPIC	TYPED BY	CHECKED BY
APPROVED 90-11-30 203 0115	DATE APPROVED	VALUE OF GOODS RECOVERED	VALUE OF GOODS STOLEN



SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

PR13 (02/87)
CASE NUMBER: 97411/90
PAGE NUMBER: 2

TYPE OF OCCURRENCE: SUDDEN DEATH
TIME OF REPORT: 24 HR. 2400
DATE OF REPORT: 90 11 29

cont: Stella stated that at that time he was in the company of one JASON ROY possible address 516 Ave I south dob: 73 12 20. Neil told her he was going to see EDDY RUSHTON that night and that was the last she saw him.

2230 hrs I attended at 211 109 Street West where I spoke to Mrs PAT PICKARD who stated that she recieved a phone call from the deceased also on November 24/90 at approx 2200 hrs and he stated to her that he wanted to turr himself into the police but needed time to think. PICKARD was also able to confirm the clothing worn by the [illegible] deceased as being the same he was found wearing this date. She stated however the Jacket with the words " BOYS TOWN COWBOYS" was not the deceasee property..

As a result of the investigation the following persons are believed to have possibly had contact with the deceased in the past week from NOVEMBER 24 to NOVEMBER 29/90.

1. EDDY RUSHTON dob; 70 10 06 possible address 1109 AVE K NORTH.
2. JASON ROY dob: 73 12 22 " " 516 AVE I SOUTH
3. SHAWN DRAPER dob"73 12 20 " " 105 1702 22 St West
4. DENNIS MCCALLUM dob;72 02 14 " " 907 ~~9~~ Street East
5. SHANNON RAE NOWASELSKI dob:74 10 27 " 1 Bateman Cres.

Nowaselski is a former girl friend of the deceased and information fr Pickard is that he had contact with her.

STOLEN $ | DEFRAUDED $ | DAMAGED $ | OPERATION I.D. BEING USED ☐ YES ☐ NO | REPORT RECEIVED DAY MONTH YEAR TIME | REPORT DICTATED DAY MONTH YEAR TIME

SUBMITTED BY | BADGE | PLATOON OR SECTION | PARTNER | BADGE

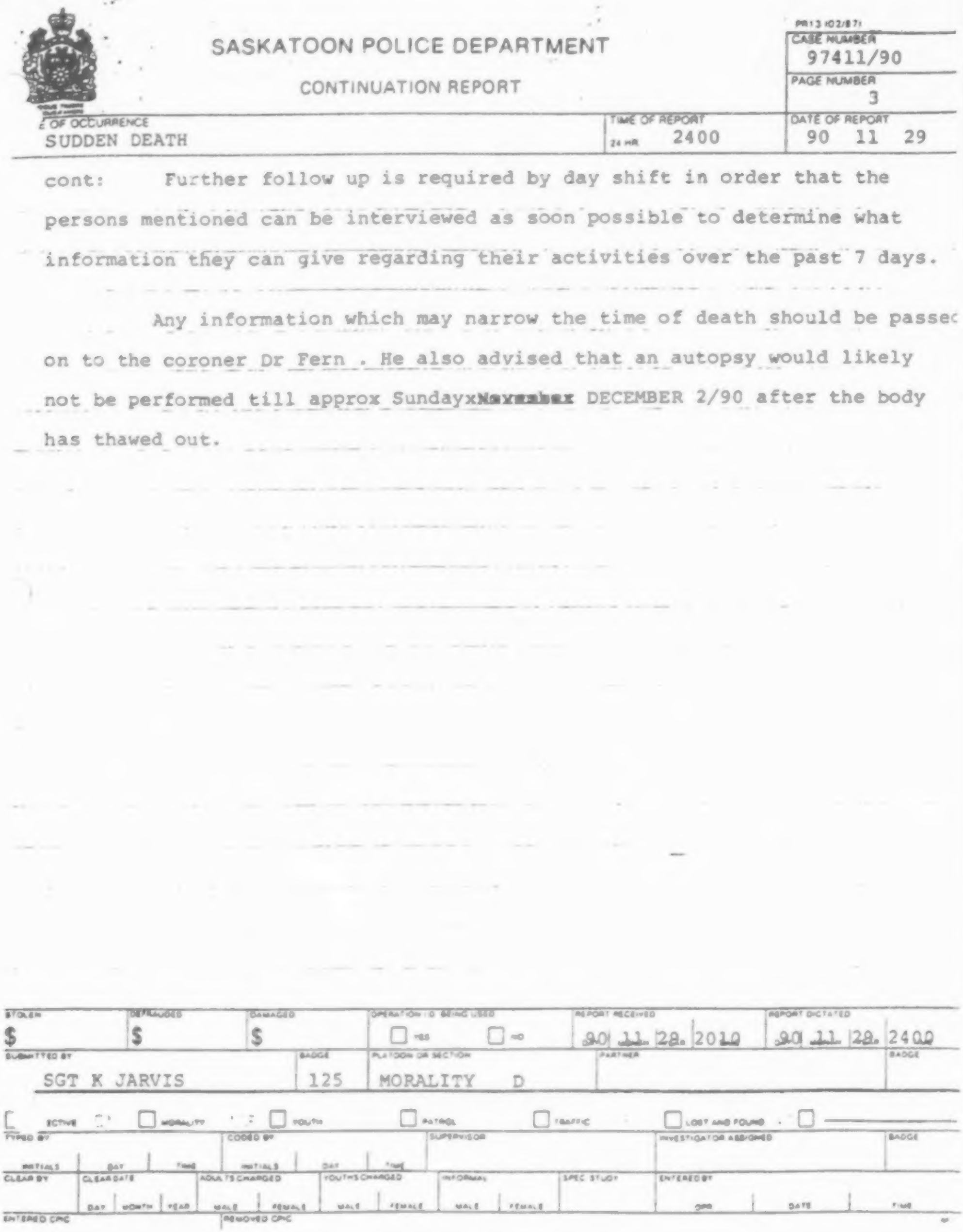
☐ DETECTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYP INITIALS DAY TIME | CODED BY INITIALS DAY TIME | SUPERVISOR | INVESTIGATOR ASSIGNED | BADGE

CLEAR BY | CLEAR DATE DAY MONTH YEAR | ADULTS CHARGED MALE FEMALE | YOUTHS CHARGED MALE FEMALE | INFORMAL MALE FEMALE | SPEC STUDY | ENTERED BY OPR DATE TIME

ENTERED CPIC OPR DAY TIME | REMOVED CPIC OPR DAY TIME

Exhibit P-61



PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

CASE NUMBER 97411/90		
PAGE NUMBER 3		
E OF OCCURRENCE SUDDEN DEATH	TIME OF REPORT 24 HR. 2400	DATE OF REPORT 90 11 29

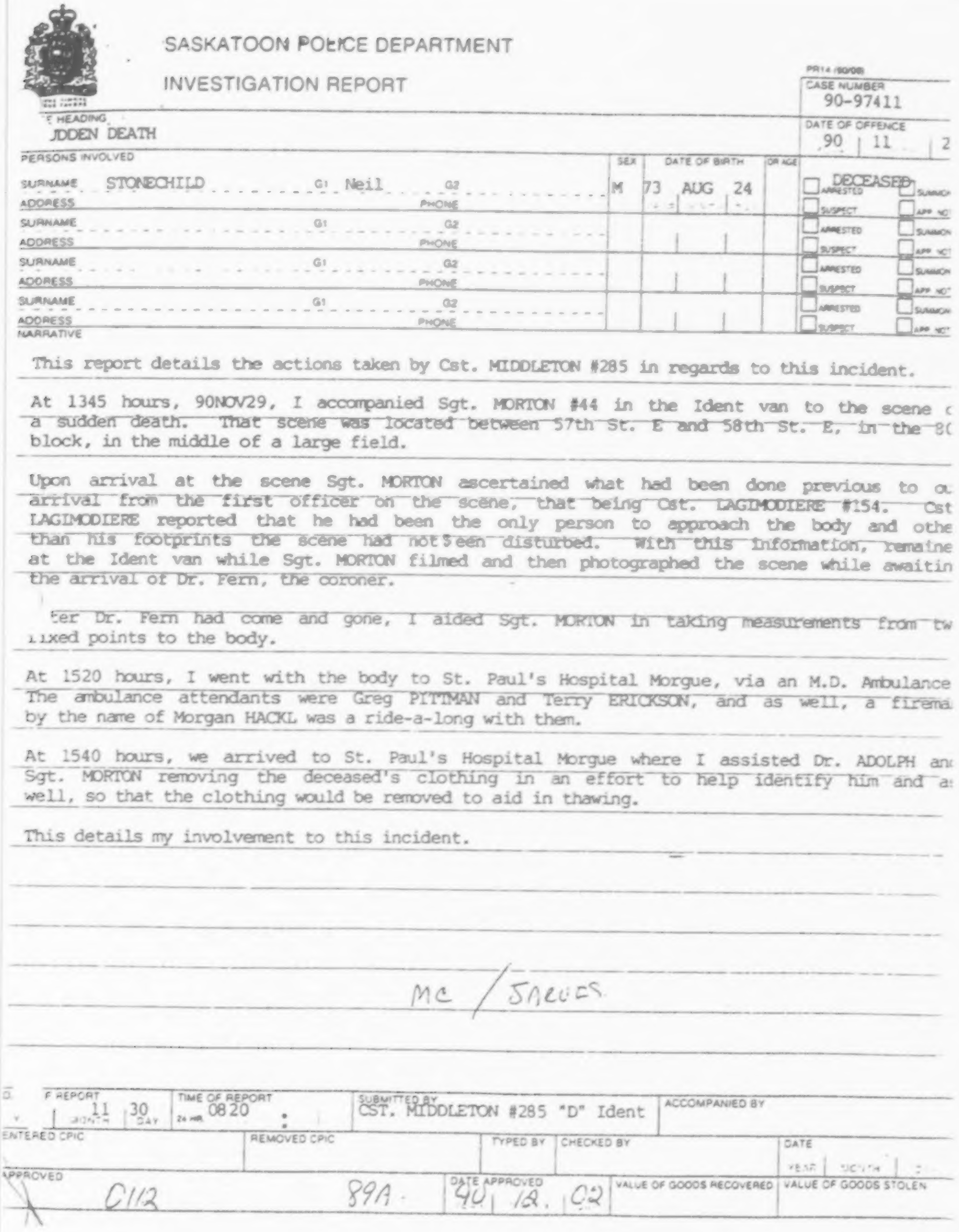
cont: Further follow up is required by day shift in order that the persons mentioned can be interviewed as soon possible to determine what information they can give regarding their activities over the past 7 days.

Any information which may narrow the time of death should be passec on to the coroner Dr Fern . He also advised that an autopsy would likely not be performed till approx Sunday~~xNovember~~ DECEMBER 2/90 after the body has thawed out.

STOLEN $	DEFRAUDED $	DAMAGED $	OPERATION I.D. BEING USED ☐ YES ☐ NO	REPORT RECEIVED 90 11 28 2010	REPORT DICTATED 90 11 28 2400
SUBMITTED BY SGT K JARVIS	BADGE 125	PLATOON OR SECTION MORALITY D	PARTNER		BADGE

☐ DETECTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYPED BY INITIALS DAY TIME	CODED BY INITIALS DAY TIME	SUPERVISOR	INVESTIGATOR ASSIGNED		BADGE	
CLEAR BY	CLEAR DATE DAY MONTH YEAR	ADULTS CHARGED MALE FEMALE	YOUTHS CHARGED MALE FEMALE	INFORMAL MALE FEMALE	SPEC STUDY	ENTERED BY OPR DATE TIME
ENTERED CPIC	REMOVED CPIC					



SASKATOON POLICE DEPARTMENT

INVESTIGATION REPORT

PR14 (90/08)

CASE NUMBER 90-97411

E HEADING JDDEN DEATH

DATE OF OFFENCE 90 | 11 | 2

PERSONS INVOLVED

			SEX	DATE OF BIRTH	OR AGE	
SURNAME STONECHILD	G1 Neil	G2	M	73 AUG 24		DECEASED ☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
ADDRESS		PHONE				
SURNAME	G1	G2				☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
ADDRESS		PHONE				
SURNAME	G1	G2				☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
ADDRESS		PHONE				
SURNAME	G1	G2				☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
ADDRESS		PHONE				

NARRATIVE

This report details the actions taken by Cst. MIDDLETON #285 in regards to this incident.

At 1345 hours, 90NOV29, I accompanied Sgt. MORTON #44 in the Ident van to the scene c a sudden death. That scene was located between 57th St. E and 58th St. E, in the 8(block, in the middle of a large field.

Upon arrival at the scene Sgt. MORTON ascertained what had been done previous to ou arrival from the first officer on the scene, that being Cst. LAGIMODIERE #154. Cst LAGIMODIERE reported that he had been the only person to approach the body and othe than his footprints the scene had not been disturbed. With this information, remaine at the Ident van while Sgt. MORTON filmed and then photographed the scene while awaitin the arrival of Dr. Fern, the coroner.

ter Dr. Fern had come and gone, I aided Sgt. MORTON in taking measurements from tw ixed points to the body.

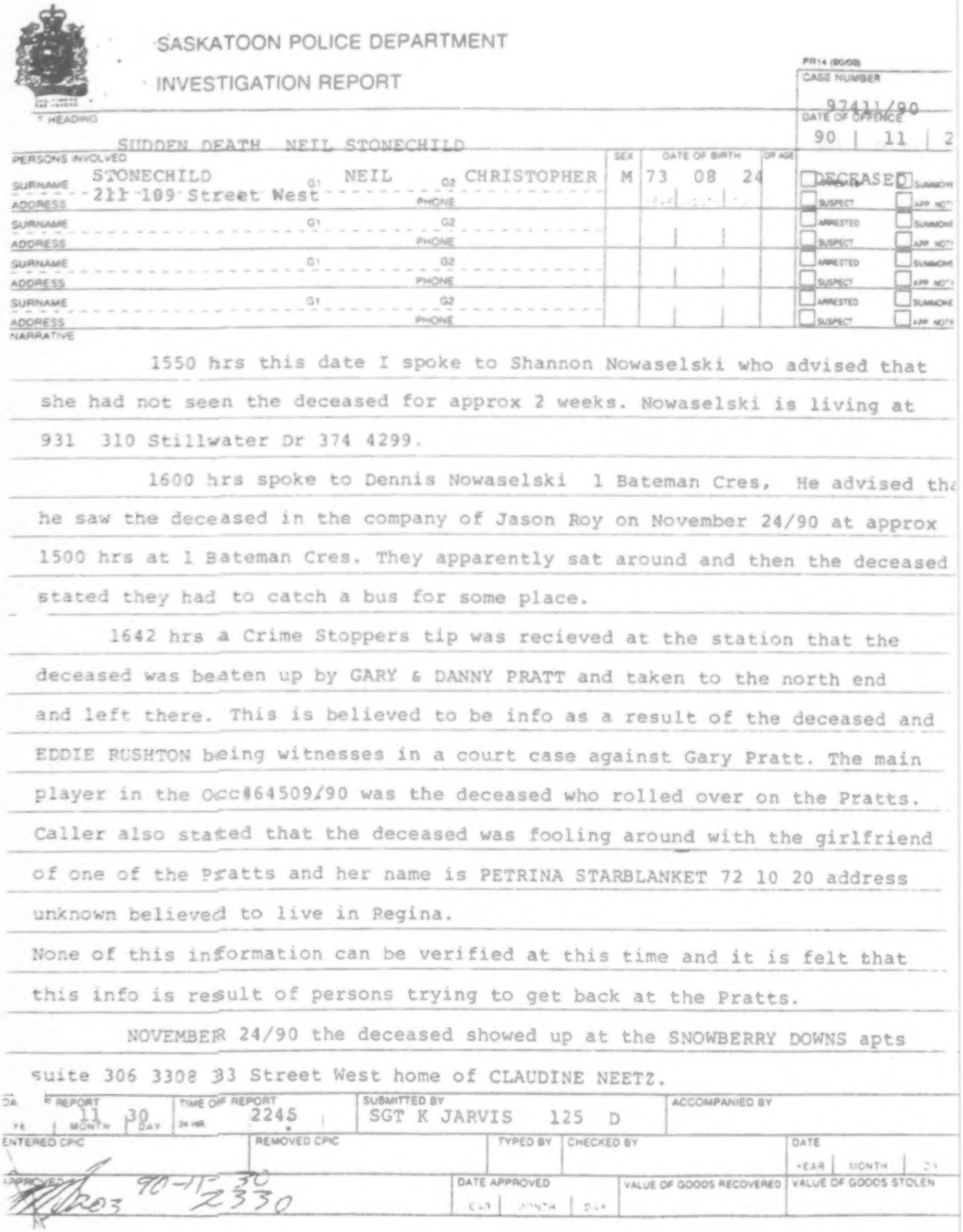
At 1520 hours, I went with the body to St. Paul's Hospital Morgue, via an M.D. Ambulance The ambulance attendants were Greg PITTMAN and Terry ERICKSON, and as well, a firema by the name of Morgan HACKL was a ride-a-long with them.

At 1540 hours, we arrived to St. Paul's Hospital Morgue where I assisted Dr. ADOLPH an Sgt. MORTON removing the deceased's clothing in an effort to help identify him and a well, so that the clothing would be removed to aid in thawing.

This details my involvement to this incident.

MC / JACUES

D. F REPORT Y | 11 MONTH | 30 DAY	TIME OF REPORT 24 HR 08 20	SUBMITTED BY CST. MIDDLETON #285 "D" Ident		ACCOMPANIED BY
ENTERED CPIC	REMOVED CPIC	TYPED BY	CHECKED BY	DATE YEAR | MONTH | D
APPROVED C112 89A.	DATE APPROVED 90 | 12. | 02	VALUE OF GOODS RECOVERED		VALUE OF GOODS STOLEN



SASKATOON POLICE DEPARTMENT

INVESTIGATION REPORT

PR14 (80/08)

CASE NUMBER 97411/90

DATE OF OFFENCE 90 | 11 | 2

HEADING SUDDEN DEATH NEIL STONECHILD

PERSONS INVOLVED

SURNAME STONECHILD	G1 NEIL	G2 CHRISTOPHER	SEX M	DATE OF BIRTH 73 08 24	☐ DECEASED ☐ SUMMONS
ADDRESS 211 109 Street West		PHONE			☐ SUSPECT ☐ APP NOT
SURNAME	G1	G2			☐ ARRESTED ☐ SUMMONS
ADDRESS		PHONE			☐ SUSPECT ☐ APP NOT
SURNAME	G1	G2			☐ ARRESTED ☐ SUMMONS
ADDRESS		PHONE			☐ SUSPECT ☐ APP NOT
SURNAME	G1	G2			☐ ARRESTED ☐ SUMMONS
ADDRESS		PHONE			☐ SUSPECT ☐ APP NOT

NARRATIVE

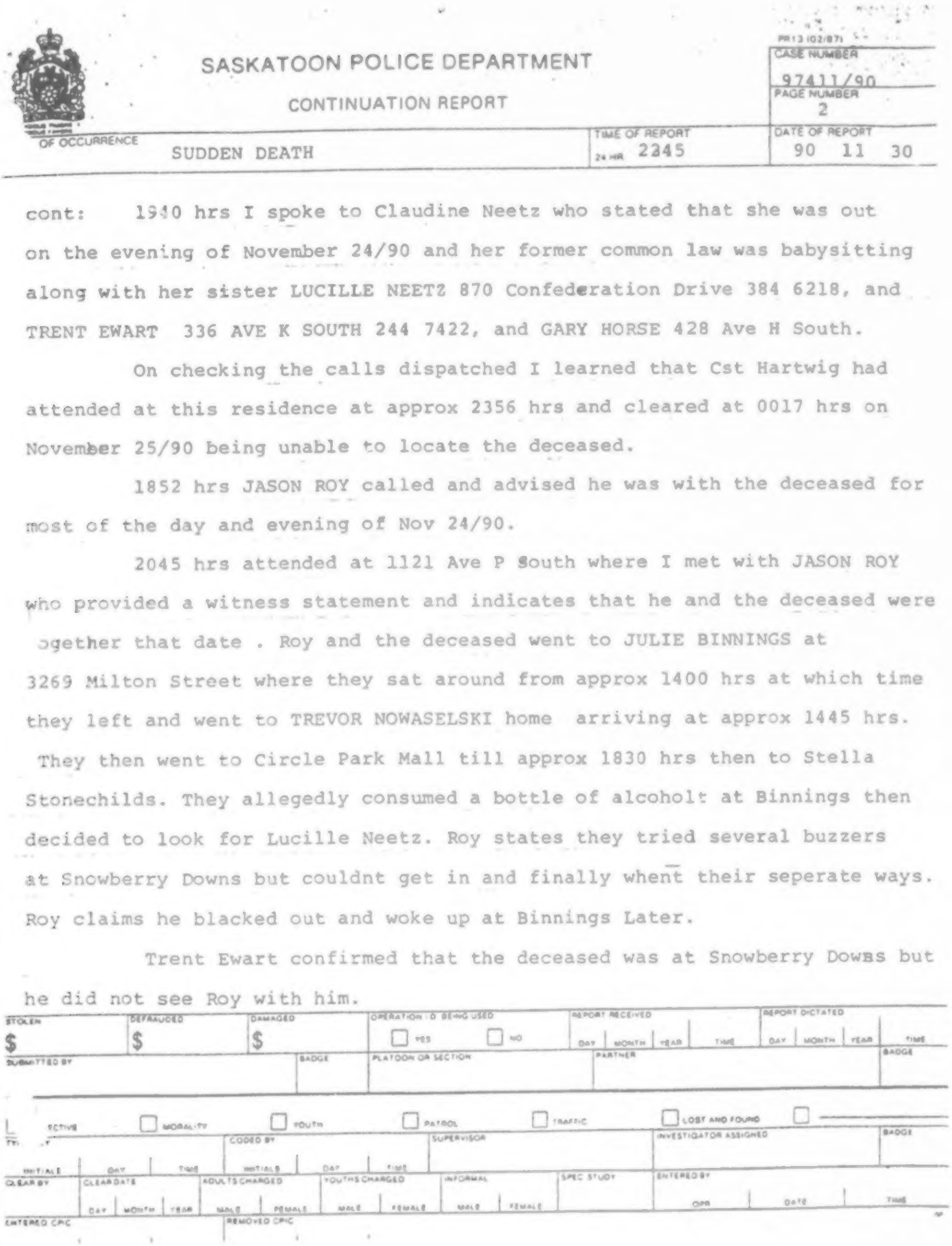
1550 hrs this date I spoke to Shannon Nowaselski who advised that she had not seen the deceased for approx 2 weeks. Nowaselski is living at 931 310 Stillwater Dr 374 4299.

1600 hrs spoke to Dennis Nowaselski 1 Bateman Cres, He advised tha he saw the deceased in the company of Jason Roy on November 24/90 at approx 1500 hrs at 1 Bateman Cres. They apparently sat around and then the deceased stated they had to catch a bus for some place.

1642 hrs a Crime Stoppers tip was recieved at the station that the deceased was beaten up by GARY & DANNY PRATT and taken to the north end and left there. This is believed to be info as a result of the deceased and EDDIE RUSHTON being witnesses in a court case against Gary Pratt. The main player in the Occ#64509/90 was the deceased who rolled over on the Pratts. Caller also stated that the deceased was fooling around with the girlfriend of one of the Pratts and her name is PETRINA STARBLANKET 72 10 20 address unknown believed to live in Regina.
None of this information can be verified at this time and it is felt that this info is result of persons trying to get back at the Pratts.

NOVEMBER 24/90 the deceased showed up at the SNOWBERRY DOWNS apts suite 306 3308 33 Street West home of CLAUDINE NEETZ.

DATE OF REPORT YR MONTH 11 DAY 30	TIME OF REPORT 24 HR 2245	SUBMITTED BY SGT K JARVIS 125 D	ACCOMPANIED BY
ENTERED CPIC	REMOVED CPIC	TYPED BY	CHECKED BY
DATE YEAR MONTH DAY			
APPROVED 203 90-11-30 2330	DATE APPROVED YEAR MONTH DAY	VALUE OF GOODS RECOVERED	VALUE OF GOODS STOLEN



PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

CASE NUMBER 97411/90
PAGE NUMBER 2

OF OCCURRENCE SUDDEN DEATH
TIME OF REPORT 24 HR 2345
DATE OF REPORT 90 11 30

cont: 1940 hrs I spoke to Claudine Neetz who stated that she was out on the evening of November 24/90 and her former common law was babysitting along with her sister LUCILLE NEETZ 870 Confederation Drive 384 6218, and TRENT EWART 336 AVE K SOUTH 244 7422, and GARY HORSE 428 Ave H South.

On checking the calls dispatched I learned that Cst Hartwig had attended at this residence at approx 2356 hrs and cleared at 0017 hrs on November 25/90 being unable to locate the deceased.

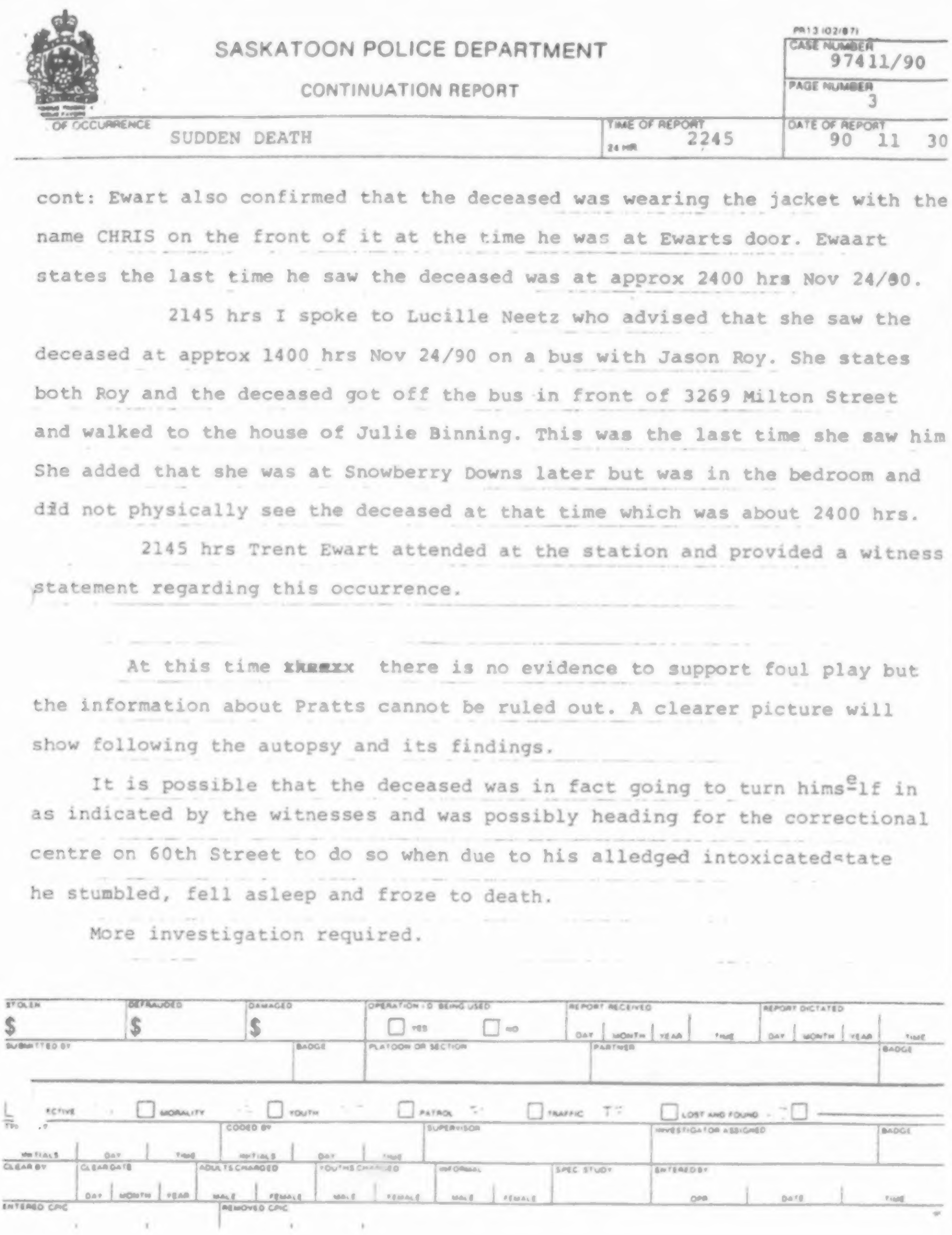
1852 hrs JASON ROY called and advised he was with the deceased for most of the day and evening of Nov 24/90.

2045 hrs attended at 1121 Ave P South where I met with JASON ROY who provided a witness statement and indicates that he and the deceased were together that date . Roy and the deceased went to JULIE BINNINGS at 3269 Milton Street where they sat around from approx 1400 hrs at which time they left and went to TREVOR NOWASELSKI home arriving at approx 1445 hrs. They then went to Circle Park Mall till approx 1830 hrs then to Stella Stonechilds. They allegedly consumed a bottle of alcoholt at Binnings then decided to look for Lucille Neetz. Roy states they tried several buzzers at Snowberry Downs but couldnt get in and finally whent their seperate ways. Roy claims he blacked out and woke up at Binnings Later.

Trent Ewart confirmed that the deceased was at Snowberry Dowms but he did not see Roy with him.

STOLEN $ | DEFRAUDED $ | DAMAGED $ | OPERATION I.D. BEING USED ☐ YES ☐ NO | REPORT RECEIVED DAY MONTH YEAR TIME | REPORT DICTATED DAY MONTH YEAR TIME
SUBMITTED BY | BADGE | PLATOON OR SECTION | PARTNER | BADGE
ECTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐
INITIALS DAY TIME | CODED BY INITIALS DAY TIME | SUPERVISOR | INVESTIGATOR ASSIGNED | BADGE
CLEAR BY | CLEAR DATE DAY MONTH YEAR | ADULTS CHARGED MALE FEMALE | YOUTHS CHARGED MALE FEMALE | INFORMAL MALE FEMALE | SPEC STUDY | ENTERED BY OPR DATE TIME
ENTERED CPIC | REMOVED CPIC

Saskatoon Police Service Investigation File
Exhibit P-61



PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

CASE NUMBER 97411/90

PAGE NUMBER 3

OF OCCURRENCE: SUDDEN DEATH

TIME OF REPORT 24 HR: 2245

DATE OF REPORT: 90 11 30

cont: Ewart also confirmed that the deceased was wearing the jacket with the name CHRIS on the front of it at the time he was at Ewarts door. Ewaart states the last time he saw the deceased was at approx 2400 hrs Nov 24/90.

2145 hrs I spoke to Lucille Neetz who advised that she saw the deceased at approx 1400 hrs Nov 24/90 on a bus with Jason Roy. She states both Roy and the deceased got off the bus in front of 3269 Milton Street and walked to the house of Julie Binning. This was the last time she saw him She added that she was at Snowberry Downs later but was in the bedroom and did not physically see the deceased at that time which was about 2400 hrs.

2145 hrs Trent Ewart attended at the station and provided a witness statement regarding this occurrence.

At this time xhexxx there is no evidence to support foul play but the information about Pratts cannot be ruled out. A clearer picture will show following the autopsy and its findings.

It is possible that the deceased was in fact going to turn himself in as indicated by the witnesses and was possibly heading for the correctional centre on 60th Street to do so when due to his alledged intoxicated state he stumbled, fell asleep and froze to death.

More investigation required.

STOLEN	DEFRAUDED	DAMAGED	OPERATION I.D. BEING USED	REPORT RECEIVED	REPORT DICTATED
$	$	$	☐ YES ☐ NO	DAY / MONTH / YEAR / TIME	DAY / MONTH / YEAR / TIME

SUBMITTED BY	BADGE	PLATOON OR SECTION	PARTNER	BADGE

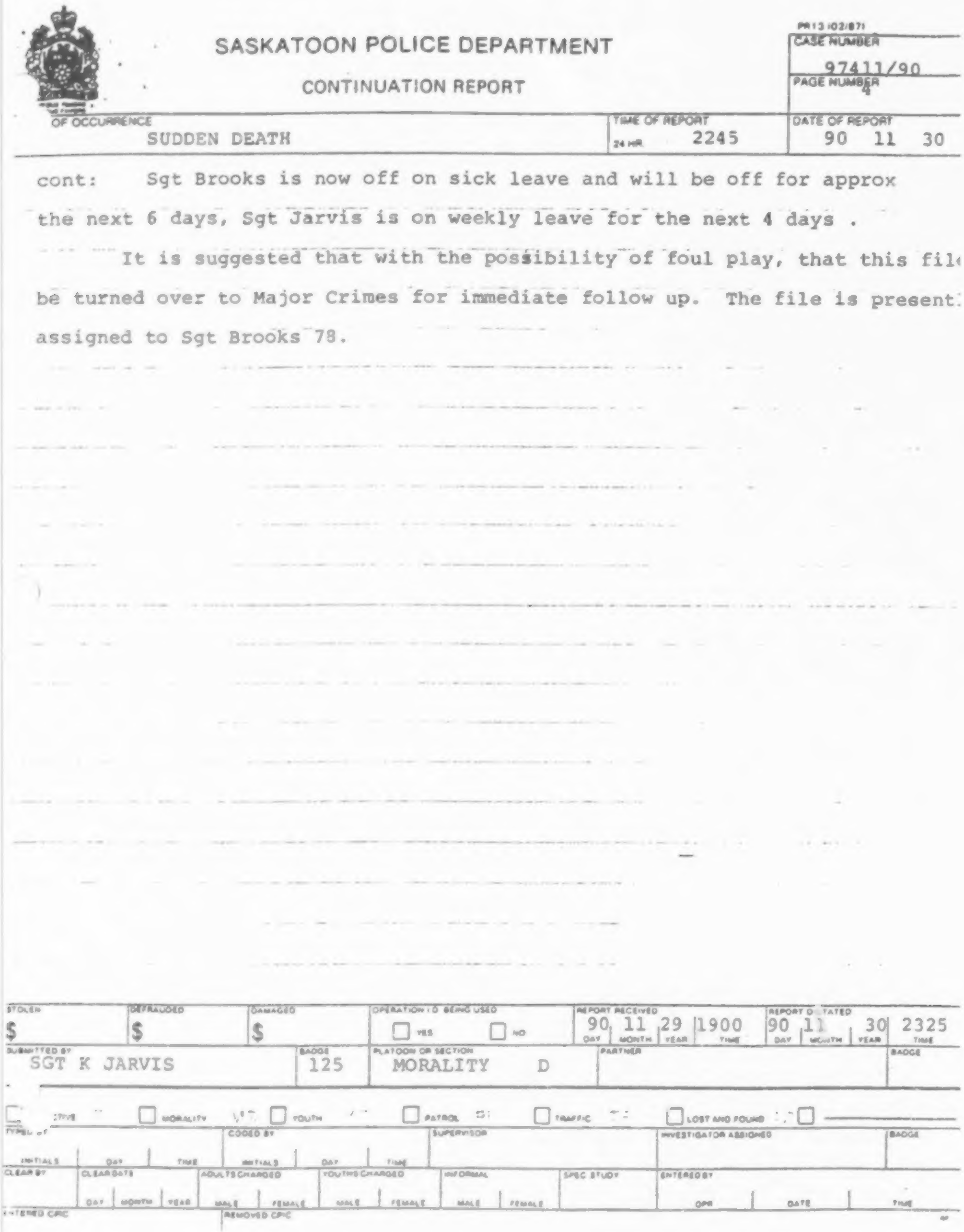
ECTIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYPED BY	CODED BY	SUPERVISOR	INVESTIGATOR ASSIGNED	BADGE
INITIALS / DAY / TIME	INITIALS / DAY / TIME			

CLEAR BY	CLEAR DATE	ADULTS CHARGED	YOUTHS CHARGED	INFORMAL	SPEC STUDY	ENTERED BY
	DAY / MONTH / YEAR	MALE / FEMALE	MALE / FEMALE	MALE / FEMALE		OPR / DATE / TIME

ENTERED CPIC

REMOVED CPIC



PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

CASE NUMBER		97411/90
PAGE NUMBER		4

OF OCCURRENCE	TIME OF REPORT 24 HR.	DATE OF REPORT
SUDDEN DEATH	2245	90 11 30

cont: Sgt Brooks is now off on sick leave and will be off for approx the next 6 days, Sgt Jarvis is on weekly leave for the next 4 days .

It is suggested that with the possibility of foul play, that this fil be turned over to Major Crimes for immediate follow up. The file is present assigned to Sgt Brooks 78.

STOLEN	DEFRAUDED	DAMAGED	OPERATION I.D. BEING USED	REPORT RECEIVED DAY / MONTH / YEAR / TIME	REPORT DICTATED DAY / MONTH / YEAR / TIME
$	$	$	☐ YES ☐ NO	90 11 29 1900	90 11 30 2325

SUBMITTED BY	BADGE	PLATOON OR SECTION	PARTNER	BADGE
SGT K JARVIS	125	MORALITY D		

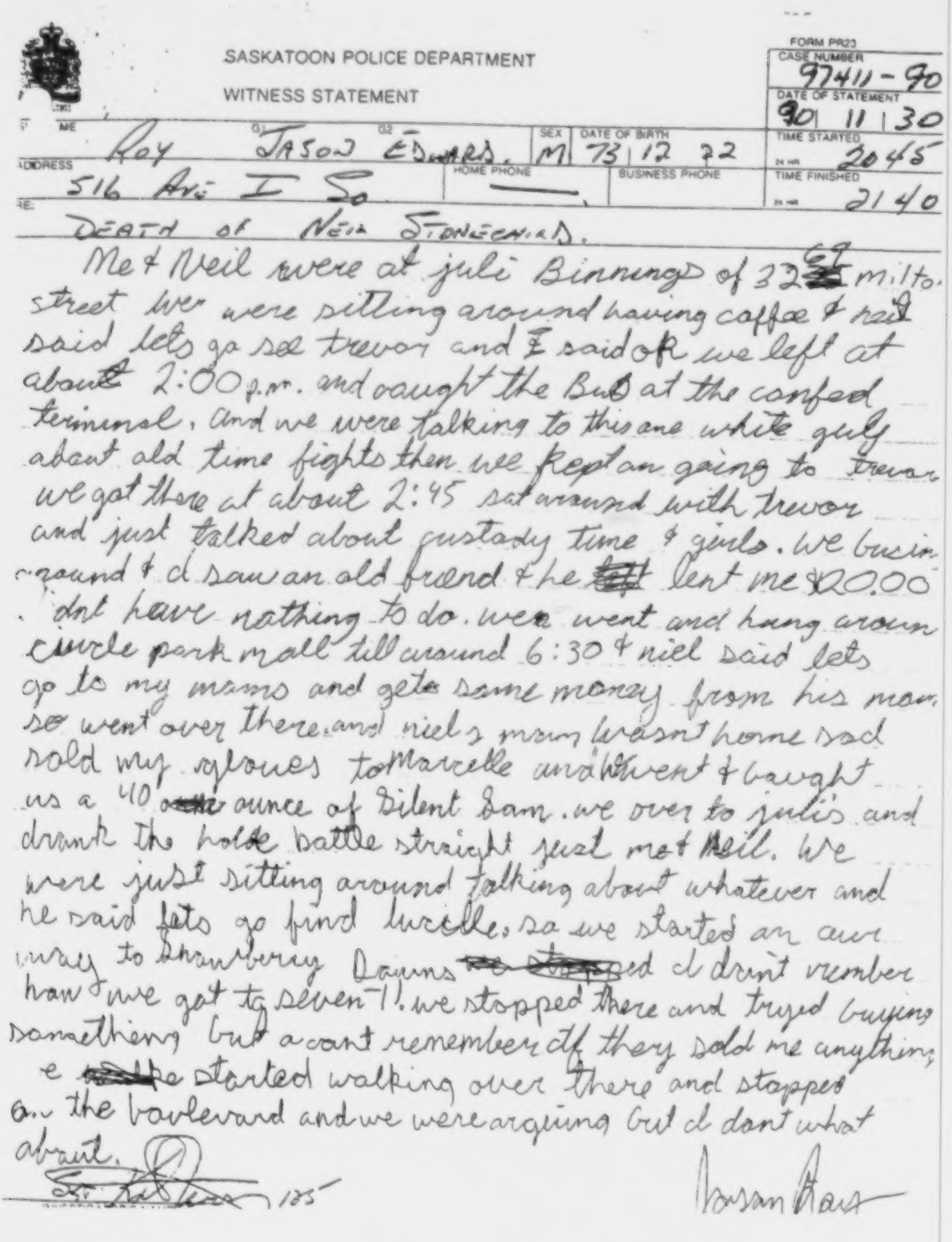
☐ TIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYPED BY INITIALS / DAY / TIME	CODED BY INITIALS / DAY / TIME	SUPERVISOR	INVESTIGATOR ASSIGNED	BADGE

CLEAR BY	CLEAR DATE DAY / MONTH / YEAR	ADULTS CHARGED MALE / FEMALE	YOUTHS CHARGED MALE / FEMALE	INFORMAL MALE / FEMALE	SPEC STUDY	ENTERED BY OPR / DATE / TIME

ENTERED CPIC	REMOVED CPIC

Exhibit P-61



FORM PR23

SASKATOON POLICE DEPARTMENT

WITNESS STATEMENT

CASE NUMBER 97411-90
DATE OF STATEMENT 90 11 30
TIME STARTED 24 HR 2045
TIME FINISHED 24 HR 2140

NAME Roy G1 Jason G2 Edwards. SEX M DATE OF BIRTH 73 12 22
ADDRESS 516 Ave I So HOME PHONE — BUSINESS PHONE
RE: DEATH OF NEIL STONECHILD.

Me & Neil were at juli Binnings of 32~~[illegible]~~67 milto. street we were sitting around having caffee & neil said lets go see trevor and I said ok we left at about 2:00 p.m. and caught the Bus at the confed terminal, And we were talking to this one white guy about old time fights then we kept on going to trevor we got there at about 2:45 sat around with trevor and just talked about custady time & girls. We bucin around & d saw an old friend & he ~~[illegible]~~ lent me $20.00 dnt have nothing to do. wea went and hung aroun circle park mall till around 6:30 & niel said lets go to my mams and geta some money from his mam so went over there. and niel's mam wasnt home sad sold my gloves to Marcelle and went & baught us a 40 ~~[illegible]~~ ounce of Silent Sam. we over to julis and drank the holde battle straight just me & Neil. We were just sitting around talking about whatever and he said lets go find lucille. so we started on our way to Snowberry Downs ~~we stopp~~ed d dont rember how we got to seven-11. we stopped there and tryed buying samething but a cant remember if they sold me anything e ~~[illegible]~~e started walking over there and stopped on the boulevard and we were arguing but d dont what about.

135

Jason Roy

SASKATOON POLICE DEPARTMENT

PR21 (02/87)

STATEMENT CONTINUATION

CASE NUMBER 9741-90
PAGE NUMBER 2
DATE 90 11 30
TIME 24 HR 2140

NAME JASON EDWARD ROY.

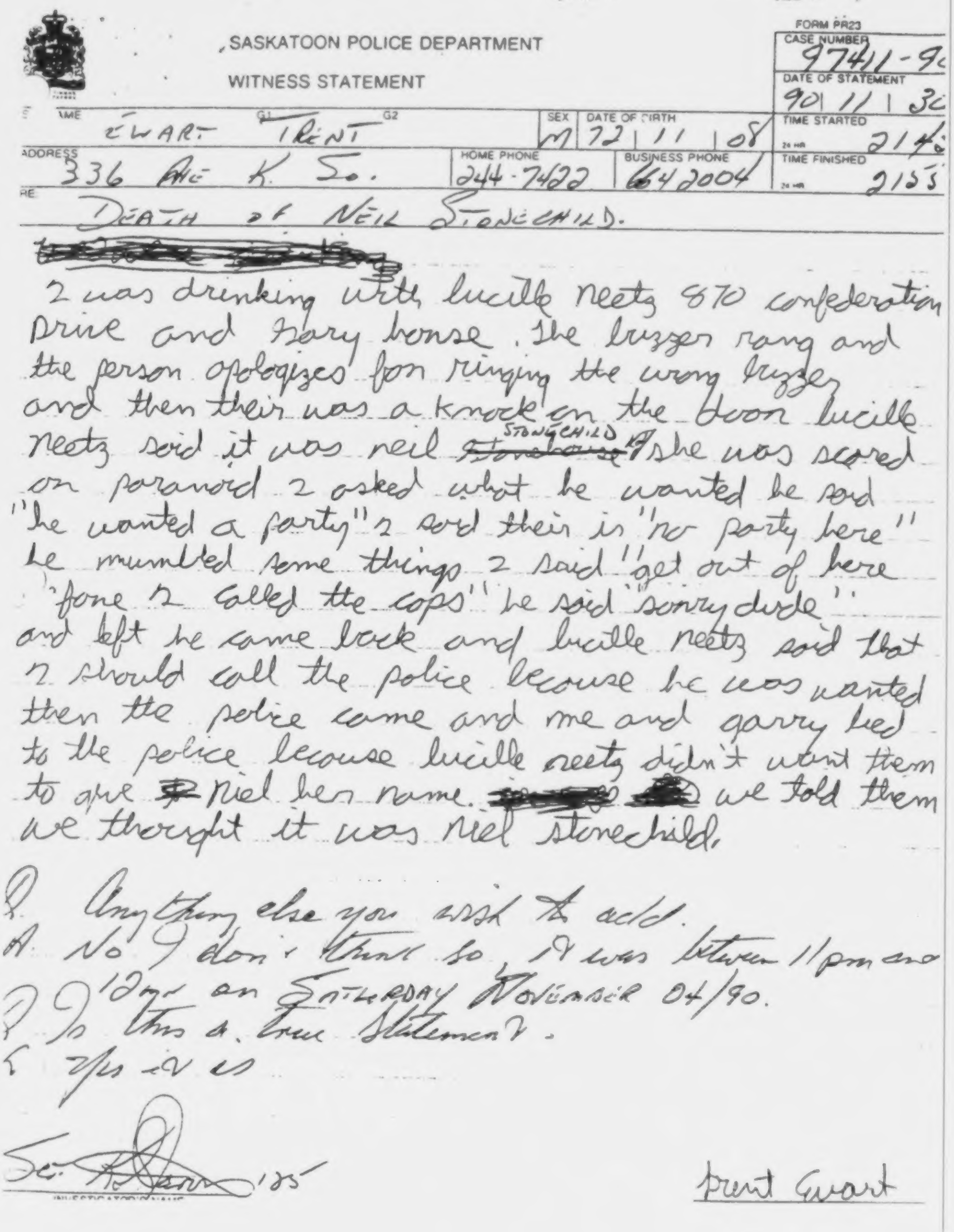
And we got to one apartment looked for lucelle's sister but it wasn't there so we checked other apartments for the last name Neetz. but we couldn't find it any where so we got to the last apartment and we were about to check it then I must have stopped him and we stood there and argued for what I don't and he turned around and said fuckin Jay and I looked around and blacked out and woke up at julie binnings.

Q. What time approx did you last see Neil Stonechild alive on NOVEMBER 24 1990
A. Could be about 1130 pm.
Q. When you say the name Trevor is that Trevor Nowakowski
A. Yes.
Q. What condition was Neil in when you last saw him
A. Pretty Drunk. Well totally out of it
Q. Is there any thing else you wish to tell me
A. No thats all I can think of.
Q. Is this a true statement
A. Yes.

Sgt K Jarvis 185.

Jason Roy

Exhibit P-61



SASKATOON POLICE DEPARTMENT

WITNESS STATEMENT

FORM PR23

CASE NUMBER 97411-9

DATE OF STATEMENT 90 11 3

AME EWART G1 TRENT G2

SEX M

DATE OF BIRTH 72 11 08

TIME STARTED 24 HR 214

ADDRESS 336 Ave K. So.

HOME PHONE 244-7422

BUSINESS PHONE 642004

TIME FINISHED 24 HR 2155

RE: DEATH of NEIL STONECHILD.

[redacted]

2 was drinking with lucille neetz 870 confederation Drive and Gary house. The buzzer rang and the person opologizes for ringing the wrong buzzer and then their was a knock on the door lucille neetz said it was neil ~~Stonehouse~~ STONECHILD she was scared on paranoid 2 asked what he wanted he said "he wanted a party" 2 said their is "no party here" he mumbled some things 2 said "get out of here "fore 2 called the cops" he said "sorry dude" and left he came back and lucille neetz said that 2 should call the police because he was wanted then the police came and me and garry lied to the police because lucille neetz didn't want them to give [illegible] niel her name. [redacted] [redacted] we told them we thought it was niel stonechild.

Q. Anything else you wish to add.

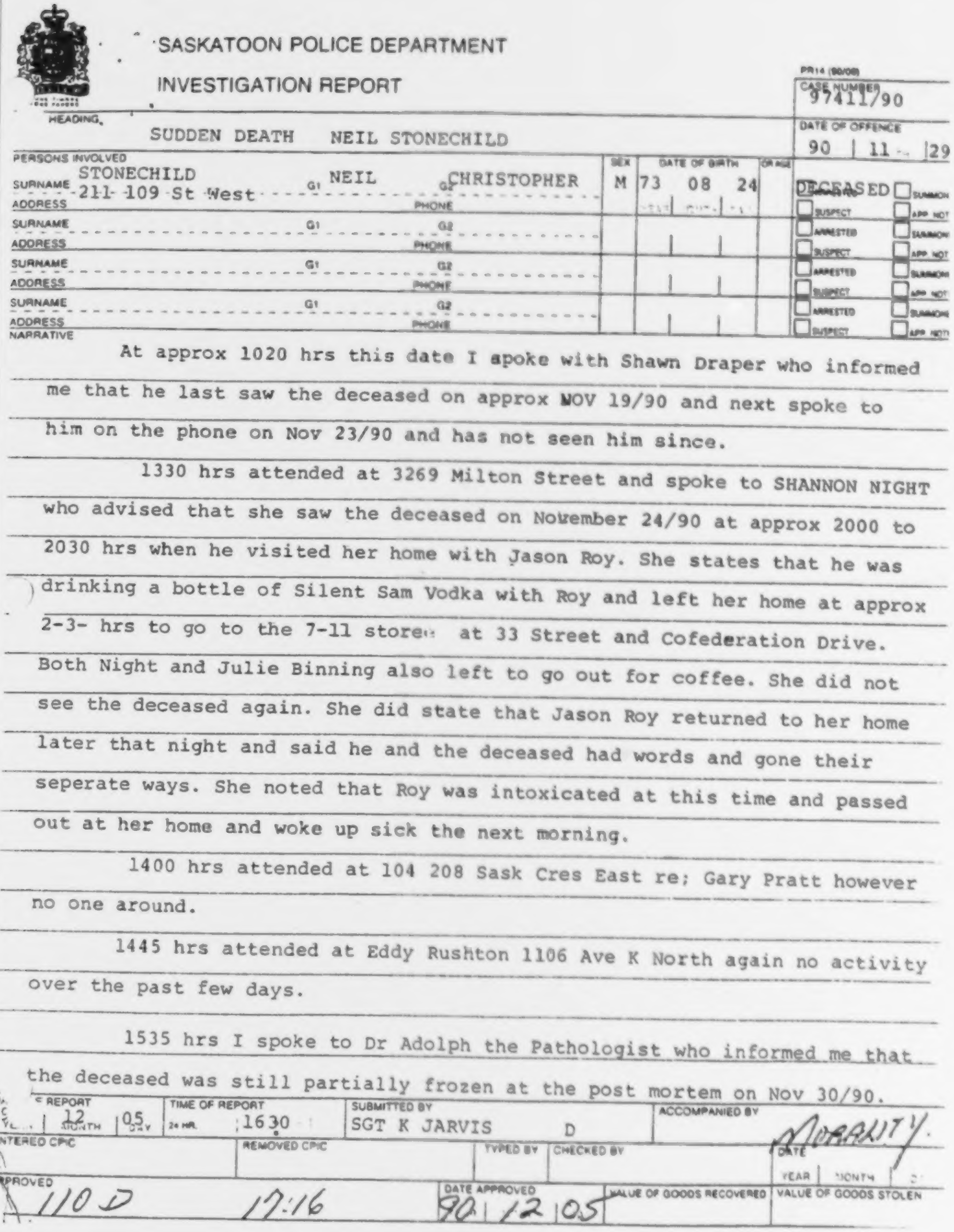
A. No I don't think so, It was between 11pm and 12pm on SATURDAY NOVEMBER 04/90.

Q. Is this a true Statement?

A. Yes it is

Sc. [illegible] 185

Trent Ewart



SASKATOON POLICE DEPARTMENT
INVESTIGATION REPORT

PR14 (90/08)
CASE NUMBER 97411/90
DATE OF OFFENCE 90 | 11 | 29

HEADING SUDDEN DEATH NEIL STONECHILD

PERSONS INVOLVED

SURNAME STONECHILD ADDRESS 211 109 St West	G1 NEIL	G2 CHRISTOPHER PHONE	SEX M	DATE OF BIRTH 73	08	24	OR AGE	DECEASED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
SURNAME ADDRESS	G1	G2 PHONE						☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
SURNAME ADDRESS	G1	G2 PHONE						☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT
SURNAME ADDRESS	G1	G2 PHONE						☐ ARRESTED ☐ SUMMON ☐ SUSPECT ☐ APP NOT

NARRATIVE

At approx 1020 hrs this date I spoke with Shawn Draper who informed me that he last saw the deceased on approx NOV 19/90 and next spoke to him on the phone on Nov 23/90 and has not seen him since.

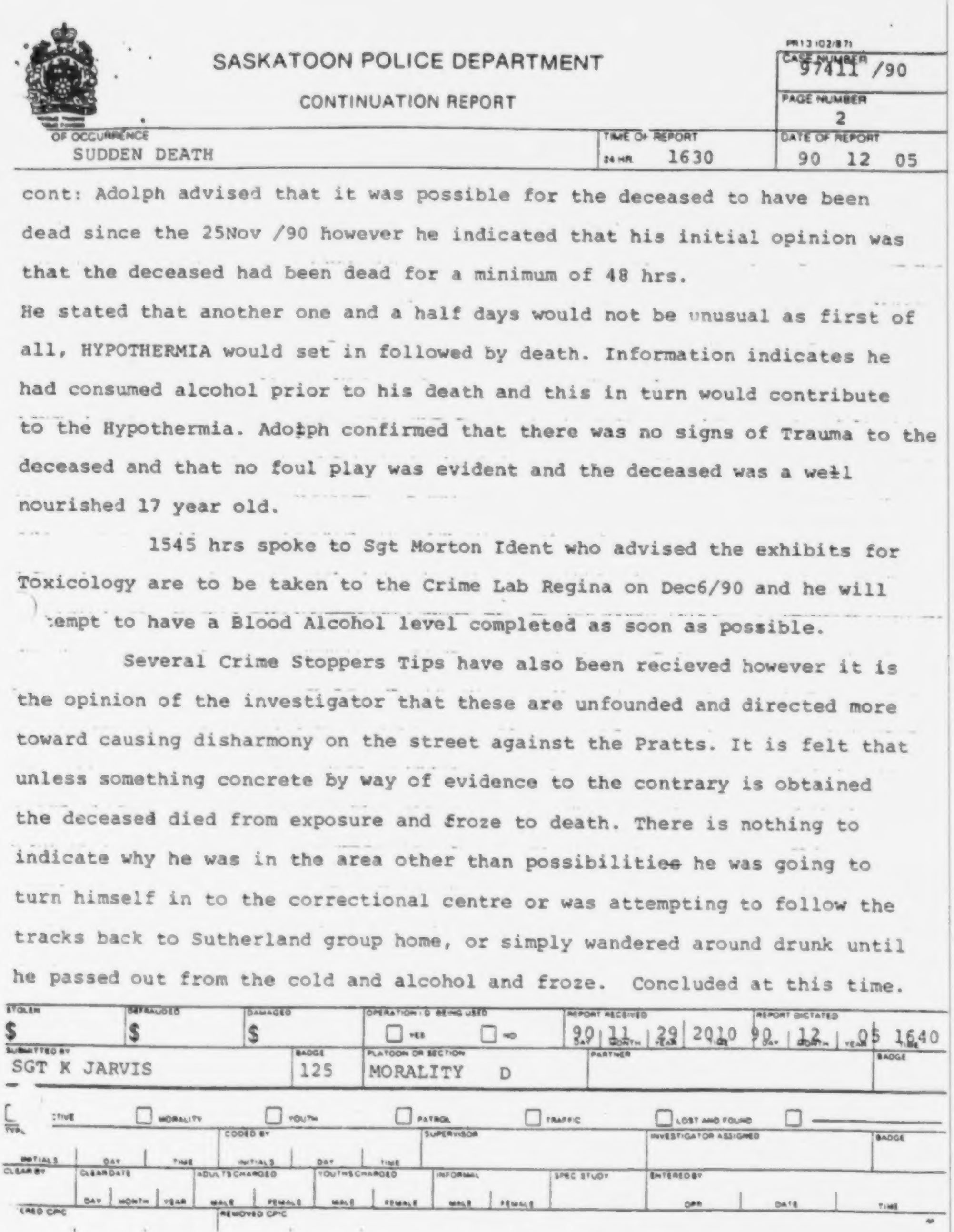
1330 hrs attended at 3269 Milton Street and spoke to SHANNON NIGHT who advised that she saw the deceased on November 24/90 at approx 2000 to 2030 hrs when he visited her home with Jason Roy. She states that he was drinking a bottle of Silent Sam Vodka with Roy and left her home at approx 2-3- hrs to go to the 7-11 store at 33 Street and Cofederation Drive. Both Night and Julie Binning also left to go out for coffee. She did not see the deceased again. She did state that Jason Roy returned to her home later that night and said he and the deceased had words and gone their seperate ways. She noted that Roy was intoxicated at this time and passed out at her home and woke up sick the next morning.

1400 hrs attended at 104 208 Sask Cres East re; Gary Pratt however no one around.

1445 hrs attended at Eddy Rushton 1106 Ave K North again no activity over the past few days.

1535 hrs I spoke to Dr Adolph the Pathologist who informed me that the deceased was still partially frozen at the post mortem on Nov 30/90.

DATE OF REPORT YEAR | 12 MONTH | 05 DAY	TIME OF REPORT 24 HR. 1630	SUBMITTED BY SGT K JARVIS D	ACCOMPANIED BY MORALITY
ENTERED CPIC	REMOVED CPIC	TYPED BY | CHECKED BY	DATE YEAR | MONTH | DAY
APPROVED 110 D 17:16	DATE APPROVED 90 | 12 | 05	VALUE OF GOODS RECOVERED	VALUE OF GOODS STOLEN



PR13 (02/87)

SASKATOON POLICE DEPARTMENT

CONTINUATION REPORT

CASE NUMBER 97411 /90

PAGE NUMBER 2

OF OCCURRENCE SUDDEN DEATH

TIME OF REPORT 24 HR 1630

DATE OF REPORT 90 12 05

cont: Adolph advised that it was possible for the deceased to have been dead since the 25Nov /90 however he indicated that his initial opinion was that the deceased had been dead for a minimum of 48 hrs.

He stated that another one and a half days would not be unusual as first of all, HYPOTHERMIA would set in followed by death. Information indicates he had consumed alcohol prior to his death and this in turn would contribute to the Hypothermia. Adolph confirmed that there was no signs of Trauma to the deceased and that no foul play was evident and the deceased was a well nourished 17 year old.

1545 hrs spoke to Sgt Morton Ident who advised the exhibits for Toxicology are to be taken to the Crime Lab Regina on Dec6/90 and he will tempt to have a Blood Alcohol level completed as soon as possible.

Several Crime Stoppers Tips have also been recieved however it is the opinion of the investigator that these are unfounded and directed more toward causing disharmony on the street against the Pratts. It is felt that unless something concrete by way of evidence to the contrary is obtained the deceased died from exposure and froze to death. There is nothing to indicate why he was in the area other than possibilities he was going to turn himself in to the correctional centre or was attempting to follow the tracks back to Sutherland group home, or simply wandered around drunk until he passed out from the cold and alcohol and froze. Concluded at this time.

STOLEN	DEFRAUDED	DAMAGED	OPERATION I.D. BEING USED	REPORT RECEIVED	REPORT DICTATED
$	$	$	☐ YES ☐ NO	90 11 29 2010	90 12 05 1640

SUBMITTED BY	BADGE	PLATOON OR SECTION	PARTNER	BADGE
SGT K JARVIS	125	MORALITY D		

☐ ...TIVE ☐ MORALITY ☐ YOUTH ☐ PATROL ☐ TRAFFIC ☐ LOST AND FOUND ☐

TYPE: INITIALS DAY TIME | CODED BY: INITIALS DAY TIME | SUPERVISOR | INVESTIGATOR ASSIGNED | BADGE

CLEAR BY | CLEAR DATE: DAY MONTH YEAR | ADULTS CHARGED: MALE FEMALE | YOUTHS CHARGED: MALE FEMALE | INFORMAL: MALE FEMALE | SPEC STUDY | ENTERED BY: OPR DATE TIME

CRED CPIC | REMOVED CPIC

Exhibit P-61

SASKATOON POLICE DEPARTMENT

INVESTIGATION REPORT

PR14 (90/08)

CASE NUMBER 90/97411

HEADING Suuden Death - North Industrial Area

DATE OF OFFENCE 90 | 11 | 2

PERSONS INVOLVED

SURNAME Stonechild G1 Neil G2 Christopher SEX M DATE OF BIRTH 73 08 24 ☐ ARRESTED ☐ SUMMONS
ADDRESS PHONE ☐ SUSPECT ☐ APP. NOT.

SURNAME G1 G2 ☐ ARRESTED ☐ SUMMONS
ADDRESS PHONE ☐ SUSPECT ☐ APP. NOT.

SURNAME G1 G2 ☐ ARRESTED ☐ SUMMONS
ADDRESS PHONE ☐ SUSPECT ☐ APP. NOT.

SURNAME G1 G2 ☐ ARRESTED ☐ SUMMONS
ADDRESS PHONE ☐ SUSPECT ☐ APP. NOT.

NARRATIVE

Received a call from Dianna FRASER, Youth Worker, 933-7259, who advised the following:

Neil Stonechild attended a party the night before his death. At the same party, was Gary Pratt. Pratt and Kelly MacDonald assaulted Stonechild about one month ago, and it was quoted that,"they almost killed him". There are bad feelings between the Pratt and MacDonald group, and they are increasing.

Crime Stoppers information indicates that Danny and Gary Pratt are responsible for assaulting Stonechild at the location he was found on 57th street, had some of his clothing taken, and left to die. This information is supposed to have come from the girlfriend of one of the Pratt boys, and was at her request that the informant call the police.

Di a Fraser states that she sees the Stonechild group gathering, and suspects there will be trouble between the two groups. This date, they were gathering at the Stonechild residence to attend a wake, and may get themselves worked up. The address given to me was 38 Confederation Cr.

MC

DAY REPORT 2 02 TIME OF REPORT 24 HR. 0 5 4 5 SUBMITTED BY R. T. Pfeil #89-A ACCOMPANIED BY

ENTERED CPIC REMOVED CPIC TYPED BY CHECKED BY DATE YEAR MONTH DAY

APPROVED 0552 84A DATE APPROVED 90 12 02 VALUE OF GOODS RECOVERED VALUE OF GOODS STOLEN

StarPhoenix Articles dated March 4, 1991 and February 22, 2000

Exhibit P-1

Family suspects foul play

Police say every avenue investigated

By Terry Craig
of The Star-Phoenix

NEIL STONECHILD

When Neil Stonechild's frozen body was found in a vacant field in north Saskatoon last November, family members immediately suspected foul play.

Three months later, they still subscribe to that theory, even though the police file on the case has been closed.

The official cause of death was listed as hypothermia. Aside from some scratches on his nose, there were no marks of physical abuse. His blood-alcohol level was .15, almost twice the legal limit for impaired driving.

Stonechild's mother, Stella, and sister, Erica, are the first to admit Neil had a problem with alcohol but they say in the months before his death, he was coming to terms with his problem.

They also say that, had Stonechild been white, police would have been more thorough in the investigation of his death.

"It makes me wonder. If Neil was the son of the mayor or commissioner, police would still be investigating," Stella said.

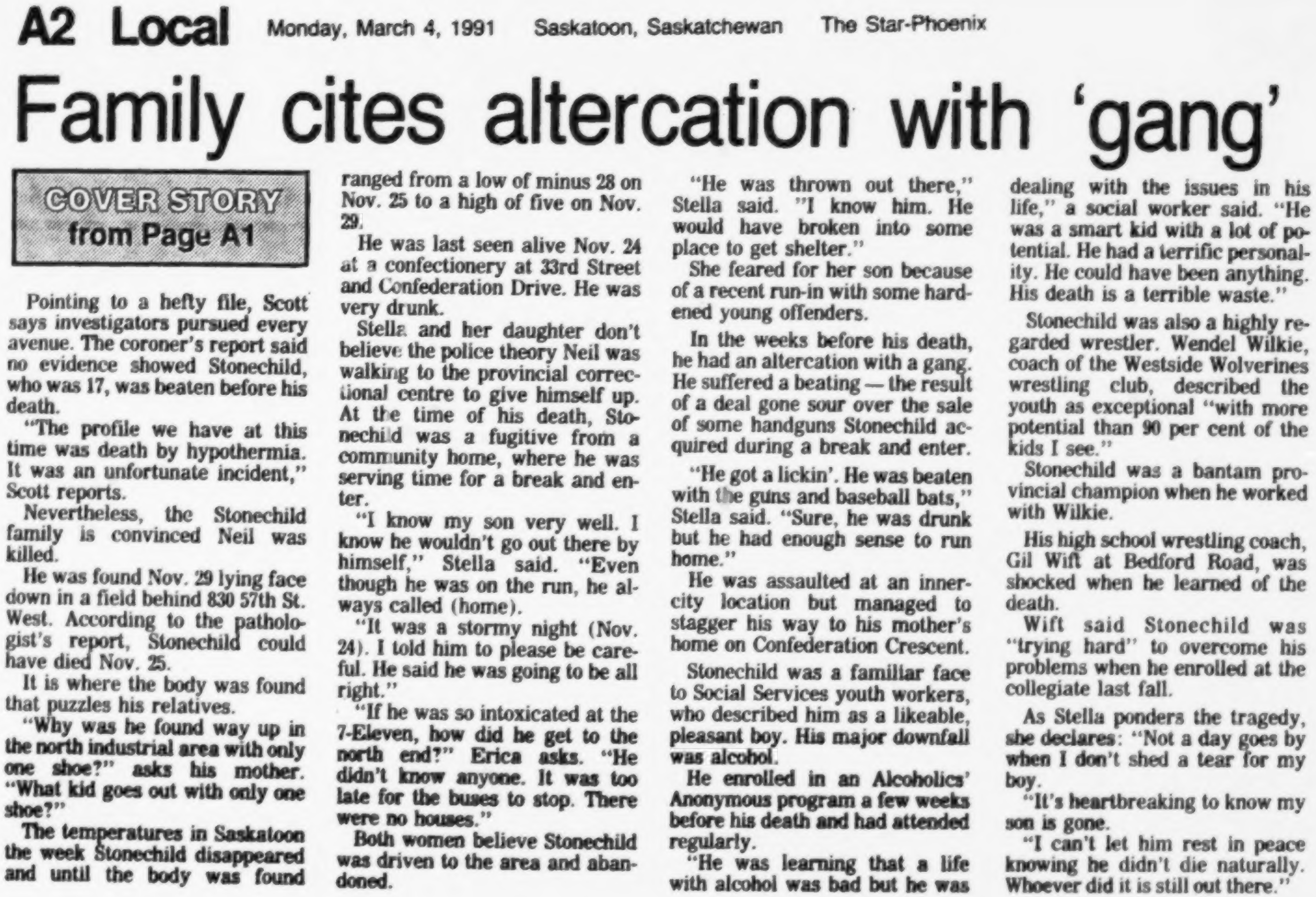
A senior officer within the department guardedly agreed.

But department spokesman Sgt. Dave Scott vehemently denies Stella's assessment of the investigation.

"I don't agree. A tremendous amount of work went into that case," he says.

MORE ON PAGE A2

Exhibit P-1



A2 Local Monday, March 4, 1991 Saskatoon, Saskatchewan The Star-Phoenix

Family cites altercation with 'gang'

COVER STORY
from Page A1

Pointing to a hefty file, Scott says investigators pursued every avenue. The coroner's report said no evidence showed Stonechild, who was 17, was beaten before his death.

"The profile we have at this time was death by hypothermia. It was an unfortunate incident," Scott reports.

Nevertheless, the Stonechild family is convinced Neil was killed.

He was found Nov. 29 lying face down in a field behind 830 57th St. West. According to the pathologist's report, Stonechild could have died Nov. 25.

It is where the body was found that puzzles his relatives.

"Why was he found way up in the north industrial area with only one shoe?" asks his mother. "What kid goes out with only one shoe?"

The temperatures in Saskatoon the week Stonechild disappeared and until the body was found ranged from a low of minus 28 on Nov. 25 to a high of five on Nov. 29.

He was last seen alive Nov. 24 at a confectionery at 33rd Street and Confederation Drive. He was very drunk.

Stella and her daughter don't believe the police theory Neil was walking to the provincial correctional centre to give himself up. At the time of his death, Stonechild was a fugitive from a community home, where he was serving time for a break and enter.

"I know my son very well. I know he wouldn't go out there by himself," Stella said. "Even though he was on the run, he always called (home).

"It was a stormy night (Nov. 24). I told him to please be careful. He said he was going to be all right."

"If he was so intoxicated at the 7-Eleven, how did he get to the north end?" Erica asks. "He didn't know anyone. It was too late for the buses to stop. There were no houses."

Both women believe Stonechild was driven to the area and abandoned.

"He was thrown out there," Stella said. "I know him. He would have broken into some place to get shelter."

She feared for her son because of a recent run-in with some hardened young offenders.

In the weeks before his death, he had an altercation with a gang. He suffered a beating — the result of a deal gone sour over the sale of some handguns Stonechild acquired during a break and enter.

"He got a lickin'. He was beaten with the guns and baseball bats," Stella said. "Sure, he was drunk but he had enough sense to run home."

He was assaulted at an inner-city location but managed to stagger his way to his mother's home on Confederation Crescent.

Stonechild was a familiar face to Social Services youth workers, who described him as a likeable, pleasant boy. His major downfall was alcohol.

He enrolled in an Alcoholics' Anonymous program a few weeks before his death and had attended regularly.

"He was learning that a life with alcohol was bad but he was dealing with the issues in his life," a social worker said. "He was a smart kid with a lot of potential. He had a terrific personality. He could have been anything. His death is a terrible waste."

Stonechild was also a highly regarded wrestler. Wendel Wilkie, coach of the Westside Wolverines wrestling club, described the youth as exceptional "with more potential than 90 per cent of the kids I see."

Stonechild was a bantam provincial champion when he worked with Wilkie.

His high school wrestling coach, Gil Wift at Bedford Road, was shocked when he learned of the death.

Wift said Stonechild was "trying hard" to overcome his problems when he enrolled at the collegiate last fall.

As Stella ponders the tragedy, she declares: "Not a day goes by when I don't shed a tear for my boy.

"It's heartbreaking to know my son is gone.

"I can't let him rest in peace knowing he didn't die naturally. Whoever did it is still out there."

StarPhoenix Articles dated March 4, 1991 and February 22, 2000
Exhibit P-72

P-1

P72

DECADE-OLD DEATH RESURFACES
N ... 02/22/2000

***Publication:** StarPhoenix*
Category: Front Page
Day: Tuesday
Published: 02/22/2000
Page: a 1
Keywords: saskatoon police, freezing death, stonechild, crime, exclusive

Caption: SP Photo by Richard Marjan - Neil Stonechild's body was found 10 years ago in this field in the city's northern industrial area, near the 800 block of 57th Street

Decade-old death resurfaces

Neil Stonechid's family questions why he froze to death in this field

***Byline:** Leslie Perreaux of The StarPhoenix*

It was a -28 C November night in 1990 when a drunk, Native 17-year-old named Neil Stonechild created a ruckus at an apartment building and then disappeared.

Five days later, Stonechild turned up frozen solid on the northern edge of the city. A victim, it seemed, of drunken meandering on a frigid night.

His mother suspected foul play immediately.

"Why was he found way up in the north industrial area with only one shoe?" Stella Bignell asked three months after her son's death. "What kid goes out with only one shoe?"

Bignell's doubts were fuelled last week by allegations that some Saskatoon police officers may be dumping troublemakers outside of town in cold weather. The RCMP is investigating the allegations of one man, and the exposure deaths of at least two others.

"I thought right away of my son. I always knew there was something wrong with this," Bignell said recently from her home in Cross Lake, Man.

"I always believed the police were there for me. I just can't understand this."

Her suspicions had been confirmed long ago by Stonechild's 16-year-old friend and drinking partner on that cold night. The friend was the last known person to see Neil Stonechild alive.

The friend has always maintained he watched the cops drive away with Stonechild in the back of a Saskatoon city police patrol car.

As the car drove away, the friend says Stonechild was screaming, "They're gonna kill me."

Weeks later police concluded Stonechild died trying to walk across the city to turn himself in at the correctional centre. He attempted this, they said, in the wee hours of a Saturday morning, while drunk, in -28 weather, wearing sneakers, a jean jacket and a lumberjack coat.

For 10 years the friend, a young man with his own lengthy criminal record, has consistently repeated his account of the incident to friends, to family and to a youth detention staffer who worked with him 10 years ago.

The friend repeated the story again in an interview Monday. His hands shook, his eyes watered and he was visibly terrified during the interview. He asked not to be identified because he is afraid of the police.

Neil Stonechild and the friend were both young men in trouble with the law on Nov. 23, 1990 when they went out drinking.

Convicted of break and enter earlier that year, Stonechild was supposed to be in a group home for young offenders. He had walked away earlier in the week and a warrant was out for his arrest.

Just after midnight on the 24th, Stonechild and his buddy went to an apartment building on 33rd Street West and Confederation Drive where their friend, Lucille Horse, was babysitting.

The pair weren't sure where to find Horse, so they knocked on doors and rang dozens of uzzers in the building, annoying a host of neighbours.

ONTD: Please see Deaths/A2

Page a2 - Death: 'They're gonna kill me'

Horse didn't let her friends into the apartment because she was babysitting and they were drunk, especially Neil.

"I still have some regrets about that to this day," Horse said. She later learned that someone in the building called police.

The friend was cold and tired and he tried to convince Stonechild to give up the hunt. Stonechild refused, so the friend headed in the opposite direction toward a drinking buddy's home.

A few minutes later while the friend was walking south along Diefenbaker Drive, he says two police officers drove up to him from an alley. The officers asked for his name and they asked if he knew the young man sitting in the back of the car. The young man in custody was Neil Stonechild.

The friend says he gave a false name to police and denied he knew Stonechild, who was swearing and bleeding in the back seat. The friend says he lied because he was wanted by police at the time and he already had a lengthy criminal record.

"Neil was screaming my name, telling me to help him. Seeing him sitting in the car like that, I was in no position to want to get in that car with him. So I lied," he said.

"I know it was him. I couldn't be more positive. He was screaming my name. It couldn't have been anyone else."

As the car drove away, the friend says Stonechild swore and screamed: "They're gonna kill me, ney're gonna kill me."

Five days later, on Nov. 29, 1990, Stonechild's frozen body was found in a field in Saskatoon's north industrial area, near the 800 block of 57th Street. He'd somehow lost a shoe. An autopsy confirmed he died from hypothermia. His body showed no signs of a struggle, except for several "scratches" across his nose, police said.

When the body was first found and before it was identified, police said the young man was 30 to 35 years old.

Early in 1991 police concluded Stonechild probably died trying to walk to the correctional centre to surrender himself.

The police noted that the young man was extremely drunk and was last seen just after midnight at a convenience store at 33rd Street and Confederation Drive, contrary to the account of the friend.

Stella Bignell wondered back in 1990 about her son's death. She always suspected foul play, although initially she thought a gang may have killed her son.

Then she heard from the friend.

Bignell, Lucille Horse, and another son Jason Stonechild, each recently confirm the friend has been steadfast in his account on various occasions since 1990.

The friend says he spoke to police twice about his allegations. He says a police officer took a statement from him shortly after Stonechild's funeral. He also says he approached homicide investigators several months later. He never heard from the police again about the incident.

Saskatoon police could not confirm or deny the claim Monday.

The friend also says he told his account to a staff member at Kilburn Hall in 1991. The staff member confirmed that assertion Monday.

The friend has now hired Saskatoon lawyer Don Worme for advice on what to do next.

Bignell wondered whether her son's death would have been more completely investigated had her son been a white person, or the son of the mayor or a police commissioner.

Police Chief Dave Scott, then a sergeant in the police force in 1991, insisted then that the case was investigated thoroughly but no evidence of foul play was found in Stonechild's death.

"A tremendous amount of work went into that case," Scott said in 1991. At the time he had on hand a thick investigative file. "It was an unfortunate incident."

The RCMP has assumed the investigation of two recent freezing deaths of Native men on the outskirts of Saskatoon.

The RCMP is also probing allegations that police dropped another Native man outside of town in freezing weather. Two officers have been suspended from the force in that case.

The StarPhoenix reported last week an allegation from a Native man who says he was picked up by police while drunk and dumped northwest of town about a month before Stonechild's death. That man walked back to the city.

RCMP Sgt. Rick Wychreschuk says the RCMP task force is not currently looking into the Stonechild case.

City police Staff Sgt. Glenn Thomson says the Stonechild file will be reviewed and may be forwarded to the RCMP task force, as well.

"We're aware of it, we're looking at it, and we'll have to see what we do with it. If the file is turned over, any information will have to come from the RCMP."

Mug(s): Neil Stonechild

Summary of Oral Rulings

1. Disclosure to Non-Clients

The Rules of Procedure and Practice provided that counsel are entitled to provide documents or other information obtained from the Commission to their clients only on terms consistent with the undertakings given by a counsel and upon the clients entering into a written undertaking in the prescribed form. The Rules of Procedure and Practice further provided that the Commissioner may, upon application, release any party in whole or in part from the provisions of the undertaking in respect of any particular document or other information or authorize disclosure of documents or information to any other person.

The Commissioner ruled that applications for authorization to disclose documents or information to a non-client may be made ex parte by letter to the Commission. He directed the application should specify the documents or information sought to be disclosed, the identity of the non-client and the purpose of such disclosure. The Commissioner directed that it was not necessary to file an affidavit in support of such applications, and it was up to counsel to determine what they wished to have considered in support of the application.

2. Pre-Hearing Conference

The Commissioner conducted a management pre-hearing conference by telephone conference call with counsel for all parties with standing. The purpose of the conference call was to discuss procedural matters such as the order of examination of witnesses by counsel. Counsel were urged to come to some agreement as to the order of examination of witnesses. If they were unable to reach an agreement, the Commissioner would direct the order of examination of witnesses. Counsel were able to agree on the order for examination for each witness.

3. Objections in the Course of the Hearings and Request for Adjournments

The Commissioner advised counsel that he did not want to hear objections in the hearing room unless the objection was first raised with Commission counsel. The intent was that, as far as possible, counsel should attempt to resolve such matters amongst themselves. If counsel could not reach any consensus, they were encouraged to discuss with Commission counsel the appropriate procedure for raising the issue before the Commissioner. The Commissioner noted that there may be matters arising in the course of the hearing which counsel did not anticipate and that it may be necessary to raise an objection without prior notice. However, the Commissioner indicated that he expected consultation on matters that could reasonably be expected to arise.

The Commissioner also advised counsel that he would not look favourably upon any request for adjournment based on unavailability of lead counsel. If lead counsel was unavailable, he expected that alternate counsel would attend the hearing.

4. Ruling as to In-Camera Hearing and Publication Bans, August 25, 2003

The Commissioner delivered the following oral ruling on whether the preliminary hearing into the admissibility of polygraph evidence should be heard in-camera, and whether a publication ban should be imposed on such hearing:

Summary of Oral Rulings

"There are several preliminary matters I must address before considering the applications brought before the Commission today. Counsel for some of the parties have suggested this proceeding should be held in-camera. That is, with no spectators present. The same counsel have also suggested I should consider a publication ban on this proceeding. Counsel for other parties have taken a contrary position on both issues.

...

I am now prepared to deal with the preliminary matters raised by counsel in their earlier submissions. The restrictions suggested by counsel for the Applicants and supporting counsel have raised very serious questions. The objective of this Commission is to conduct hearings that are as open and transparent as possible. I set out that objective in the clearest possible terms at the commencement of the Commission's work. I believe that that has been achieved to date.

A direction that this matter be held in-camera would preclude members of the public from attending this hearing. No such restriction should be imposed unless I am convinced that the nature of the matter before me requires that it be conducted in a closed session. The matters to be discussed involve a possible admission of certain evidence. If I conclude that evidence is not properly admissible, then any reference to it would not be appropriate. The only way that I can assure that a spectator would not reveal the nature of the application and the proceedings which has taken place today is to direct that this hearing be held in-camera. I must therefore most reluctantly direct that the hearings be in-camera. We will take a short adjournment in a few minutes to permit any members of the public who are here to withdraw.

It seems to me the difficulty with excluding the public from this process may be offset by allowing the members of the media to attend the hearing. The media of this country have and continue to serve as surrogates of the Canadian public. They are professional and fully acquainted with the issues I have discussed and the need for safeguards to be imposed in some cases to ensure that a judicial proceeding or inquiry properly balances the interests of the public and those of the participants in the process.

I have concluded, therefore, that it would be appropriate to allow the representatives of the media to attend during the hearing to the end.

However, I have to be mindful that without more the journalists and reporters present would be entitled to publish a full account of these proceedings. That would not be logical or proper in light of the concerns I have expressed earlier. Weighing the right of media representatives to report and the interests of the participants affected by this application and the public, I have concluded that I should ban the publication of any report of these proceedings subject to the condition I set out hereafter. A publication ban will therefore take effect immediately and will apply to any preliminary matters dealt with in these applications and to the applications I am to hear.

> I point out to counsel and the media that in the event I allow the evidence which is subject of these applications to be provided to Commission during the Inquiry the ban will not apply to any evidence presented in the hearing. The media will then be free to report such evidence, subject to any other directions which I may give."

5. Ruling as to Hearsay Evidence

Stella Stonechild-Bignell was the first witness to testify. Counsel for the Police Association objected to her testimony as to what she had been told by her son, Marcel Stonechild, as a result of his inquiries as to the whereabouts of Neil Stonechild. The objection was based on such testimony being hearsay.

Commission counsel took the position that the strict rules of evidence do not apply and the proper test is one of reasonable relevance to the terms of reference. He further indicated that evidence as to what people were told about the disappearance of Neil Stonechild and what they did with such information was reasonably relevant to the terms of reference.

The Commissioner ruled as follows:

> "Well, as you know, I am not bound by the rules of evidence, including the exclusionary rules. But I must say that it seems to me that evidence as to what happened early on, at the beginning of these events, and what was said, including things that may have been said to the police, is extremely material because it bears, of course, on the early stage of the Inquiry and what happened after that. So that even if this was subject to the traditional rule of exclusion, I would not apply it in this case. And I must say with respect, I agree with the comments that have been made with Commission counsel. In the circumstances, I will certainly permit the evidence to be introduced."

6. Admissibility of Evidence of Incidents of Police Transporting and Dropping Persons Off at Places Other Than Detention Centre

Counsel for FSIN asked Cst. Lewis if he had any knowledge of any person detained or in custody of the Saskatoon City Police being taken to a location other than a place of detention. Objection was taken to such question on the grounds of relevancy. The Commissioner ruled that such question would be allowed provided it was limited solely to whether the witness had any knowledge of other instances and did not go into the specifics of any such incidents.

7. Objections to Evidence of Unrelated Police Misconduct

Erica Stonechild began to testify as to an unrelated incident of police misconduct. Objection was taken to this evidence on the grounds of relevance. It was argued that the evidence was relevant as it provided an explanation as to why she didn't go to the Saskatoon Police Service with information of possible police misconduct. The Commissioner ruled that a general explanation could be provided, but the witness should not go into the specifics of any prior incident, as that could require an investigation into those events.

8. Qualifications of Gary Robertson

Objections were taken to the qualifications of Gary Robertson as an expert in the area of image processing, image interpretation and the application of photogrammetry, which is the making of measurements from an image or photograph. Commissioner Wright made the following oral ruling (October 21, 2003 vol. 22, p. 4160-4163):

> "THE COMMISSIONER: Well, I've had an opportunity to consider this and I have three observations to make about this proposed evidence. It is obvious that photogrammetry is an area of investigation and analysis that is evolving, and that concerns have been expressed about the technical and scientific competence of a witness to express an opinion based upon that technique, and to express other opinions as to what conclusion should be drawn as a result of measurement observations and analysis.
>
> I have also had to consider Mr. Robertson's professional history and whether that supports the conclusion that he is competent to express opinions in the areas Mr. Hesje has outlined. And I say now that I have some reservations with respect to that, but at the moment they are not so significant that they affect my final decision.
>
> I note that this is an inquiry, not a civil or criminal trial, and as I've observed before in my rulings on other issues, I have a good deal more latitude in determining what evidence I will receive, and indeed the thrust of the cases is that an inquiry should be as broad in scope as possible given its mandate, and that one need not have the same concern about rules of evidence and the like as might be the case in a civil or criminal case. Now, as I've said before, that's not an invitation to cast aside the rules of evidence. But there is no doubt in my mind that an inquiry does have a good deal more freedom and latitude. As I've said before, it is important in a proceeding of this kind that there be access to as much information as will be helpful to me as Commissioner in reaching a conclusion about the circumstances surrounding Mr. Stonechild's death.
>
> I may conclude after hearing Mr. Robertson's evidence and the questions that have been asked of him that he is not finally competent to give his opinion with respect to either the measurements or the comparison of the measurements with physical objects; but that lies ahead. And finally I might accept his evidence but decide what weight, if any, I will give to that.
>
> Having heard the questions asked of him and the submissions that have been made by counsel, I have concluded that within the scope of the inquiry it is appropriate to hear his testimony. I cannot say what use I will make of it, if any, until I have heard all of his evidence and the questions asked of him on cross-examination. I note that counsel will have a full opportunity to test that evidence in cross-examination and there are a number of experienced counsel here who can address their minds to that issue, so I'm sure that it will be fully examined. As a consequence of the questions they ask him, they may finally be successful in discrediting him as a witness. I don't know, that lies ahead. However, I find for the purposes of the inquiry at this juncture that Mr. Robertson is qualified to testify on the limited questions outlined by Mr. Hesje."

9. Scope of Questioning of Expert Witness

The Commissioner provided the following oral ruling (January 6, 2004 vol. 31 p. 5878-5879):

> "THE COMMISSIONER: Very well. Now, are there any – I think that it's helpful for me just to make a comment here about questions asked of expert witnesses, because there may be a temptation for any expert – and I'm not singling out the Doctor – to express an opinion in an area that he or she has done some research and reading in, but has not really concentrated in that area of investigation to the extent that they're entitled to be treated as an expert. And I think that all of you need to resist the temptation to draw experts into expressing opinions in areas where they are not really qualified to testify, even if they have opinions about them. I have an opinion about recovered memory, but that doesn't make me an expert, let me assure you. And I couldn't utilize my own beliefs about this in reaching a conclusion about recovered memory or something in that area. It would be inappropriate for me to do that because I don't have the qualifications. So I just remind all counsel that, bear in mind always the purpose for which the expert has been called and that implicit when qualifying the expert is the idea that that individual will only be asked questions about the area in which he or she is qualified."

10. Application to Call Various Witnesses

Counsel for the Saskatoon Police Service brought an application to call, as a witness, Dr. James Arnold, a clinical psychologist. The Saskatoon Police Service desired to call Dr. Arnold as a witness to provide evidence on memory formation and recovery and the therapeutic technique of visualization. It was also submitted that Dr. Arnold should have an opportunity to respond to evidence by another witness, Brenda Valiaho, who gave evidence that she may have obtained advice from him in 1991 prior to performing a visualization exercise with Jason Roy.

The Saskatoon Police Service also applied to the Commissioner to call Brian Beresh to give evidence regarding Gary Robertson, a witness who provided expert evidence to the inquiry. Gary Robertson testified that he provided some expert assistance in regard to a particular court case. Mr. Beresh was one of the counsel in that case. His testimony was intended to clarify the nature and scope of Mr. Robertson's assistance in that case.

The Federation of Saskatchewan Indian First Nations applied to call Dr. John Charles Yuille and Dr. Elizabeth Loftuss to provide expert evidence on memory formation and memory recovery. The Federation of Saskatchewan Indian First Nations submitted that the evidence of these two witnesses was needed to provide balance to the evidence of Dr. Arnold, a memory expert proposed by the Saskatoon Police Service.

The Saskatoon City Police Association applied to the Commissioner to call two witnesses who were, at the time, serving custodial sentences. As a result of potential safety concerns, the Commissioner made an interim order preventing the publication of these two witnesses identities. The Police Association submitted that both of these witnesses had information that would benefit the Inquiry. The Police Association submitted that Mr. H had made statements suggesting that Jason Roy admitted to fabricating his evidence regarding police involvement in the death of Neil Stonechild, and that Gary Pratt had admitted to him that he was involved in Stonechild's death. Mr. H refused to provide the RCMP with a statement and refused to be interviewed by Commission Counsel. The other proposed witness, Mr. A initially informed the RCMP that he had no information about the death of Neil Stonechild. Subsequently, he was arrested and under suspicion for murder. He then indicated to the authorities that he knew exactly what happened to Neil Stonechild, but he refused to testify unless he was given a "deal".

The Saskatoon City Police Association also applied to call two Saskatoon Police Service members: Constable Geoffrey Brand and Constable Ted Sperling. Cst. Brand had walked a number of distances between locations that the Police Association submitted were relevant to the Inquiry. The Police Association applied to call Cst. Brand to provide the periods of time it took to walk between each location. Cst. Sperling was one of the officers operating the "Paddy Wagon" on November 24/25, 1990. The Police Association desired to call Cst. Sperling as a witness because of perceived suggestions by other counsel that the "paddy wagon" may have had some involvement in the disappearance of Neil Stonechild.

The Saskatoon City Police Association also applied to call as witnesses Staff Sgt. Ken Lyons and Corporal Jack Warner of the Royal Canadian Mounted Police. Lyons and Warner were the lead investigators in respect of the RCMP investigation into the death of Neil Stonechild. The Police Association submitted that the interaction between these officers and certain witnesses who later testified at the Inquiry was evidence that should be presented.

Commissioner Wright made the following oral ruling on these applications (January 9, 2004 vol. 34 p. 6533-6537 and March 18, 2004 vol. 34 p. 8501):

> "THE COMMISSIONER: Mr. Rossmann, before you begin – and I will come to the question of the report in a few minutes. I want to advise counsel that I had an opportunity over the lunch hour to review the applications and it's important, in my view, and before we disperse, that as much as possible I indicate to you what my inclinations are with respect to the applications.
>
> The advantage is that you will have as part of the transcribed proceedings, your submissions and my ruling, and available to you quickly, so you can make whatever arrangements you need to make with respect to future witnesses or other evidence. And I'm going to go through them and deal with each one separately.
>
> Firstly, with respect to the application brought in connection with Dr. Arnold. After weighing the positions of counsel, and they are in conflict in some instances, it seems to me that it is appropriate that Dr. Arnold be called. I am not very worried by the suggestion that in some way his reputation has been sullied because of the suggestion made – tentative suggestion made by Ms. Valiaho that she spoke to him. I agree with the observations of counsel that her reference to that was tentative, to say the least. Be that as it may, it strikes me that if he's to be called for other purposes, he will have an opportunity to address that question too, and to express his outrage for what was said.
>
> It occurred to me that there is a parallel issue here. Depending on what the proposed evidence of Dr. Arnold contains – refers to, Commission counsel may want to consider, on his own initiative, whether he wants to call Loftus and/or

Yuille. And Mr. Hesje, I think that you should have the option to make that determination in the first instance. It's not to say that you diligent counsel can't make your views known about it in due course, once you have a sense of what's going to happen, but I thought that was an appropriate caveat to attach to this.

The next matter I dealt with this morning, and that is the matter of Brian Beresh, and I dismissed that application for the reasons mentioned. And I understand Mr. Rossmann understands that.

With respect to the Loftus and Yuille applications. I indicated to you that I was going to adjourn both of those and give leave to counsel to renew their respective applications as they may be instructed and subject to what happens with respect to Dr. Arnold.

With respect to H and A – and I'm not faulting counsel in any way for the actions of these two persons, but their suggestions that they have evidence material to the Inquiry, is, in my respectful view, very curious – and I say curious in the sense that they're unwilling to share that information with the persons who must make the initial analysis and assessment of the evidence and its reliability. And I refer, of course, to the RCMP and to Commission counsel. And as I say, I don't fault Mr. Plaxton for bringing the applications, but in light of the circumstances and the conditions surrounding both these persons, I do not see any need to have them called to testify before the Inquiry.

With respect to Lyons and Warner. I want to give that more thought and so those two matters are reserved, and I will with that as promptly a I can.

With respect to the application of Constable Brand, the walker. I consider that evidence very speculative and of very marginal relevance. And I don't see any need for that evidence to be introduced before the inquiry and that application is dismissed.

For the reasons mentioned to counsel this morning with respect to Constable Sperling and the comments I made about my views as to Brand and Sperling's involvement with the paddy wagon and my conclusion that there isn't anything in the evidence connecting them with Stonechild, I see no need for Sperling to testify and that application is dismissed.

...

THE COMMISSIONER: Well, we're referring to the two RCMP officers and I indicated to you – who were investigators – I indicated to counsel earlier that I could see no reason why they should be called, but that if there were a need I could revisit the question again after the two constables had testified. I must say I see no reason for calling them."

11. Objections to Qualifications of Dr. James Arnold

Commission counsel sought to qualify Dr. Arnold as an expert on the following issues:

(a) memory formation and recovery;

(b) the impact of alcohol on memory and the recovery of alcohol-impaired memory;

(c) the use of interview techniques such as hypnosis, guided imagery, relaxation training and mediation, and in particular, the risks of created or false memory associated with such techniques.

Objection was taken to Dr. Arnold's qualifications to provide expert opinion on these issues. The Commissioner's ruling is contained in the following exchange (March 10, 2004 vol. 37 p. 6982-6989):

> "THE COMMISSIONER: Mr. Hesje, I'm going to invite some comments from you. But I just want to know – excuse me for a moment – before I do invite Mr. Hesje to answer my questions, whether any of you have any submissions to make with respect to Dr. Arnold's qualifications and the scope of his evidence. Because I confess to you, at the moment I have some concerns about the scope of his evidence and what I intend to do now is address these and discuss them with Mr. Hesje inasmuch as he's put forward the areas where he thinks Dr. Arnold might testify. Then, I guess, if need be I'll invite any of you to make any submissions apropos of that. But I think we need to review now, Mr. Hesje, just how far Dr. Arnold might go.
>
> MR. HESJE: Certainly. Now Mr. –
>
> THE COMMISSIONER: But let me begin by saying that my present impression is that the memory feature that is talked about here is something that Dr. Arnold possesses really as, presumably, all clinical psychologists would, it's an integral part of his life and work as a clinical psychologist. But I don't detect, no do I understand him to make any claims that he has any special skills or special knowledge in this area.
>
> MR. HESJE: Mr. Commissioner, I must say that I would be much more comfortable if those questions were put to Mr. Rossmann and Mr. Stevenson. You will recall that I declined to call Mr. Arnold. And I'm trying to be fair about this, but I think they should likely address those issues. The areas I sought to have him qualified for were based on the summary, the points that I drew from the summary that had been provided to Mr. Rossmann. I simply worked backwards from that and said, well, if he's going to testify in this area he needs to be qualified in this area.
>
> THE COMMISSIONER: Well, I can do that. And perhaps I'll ask Mr. Rossmann, then, to respond.
>
> Before you begin, Mr. Rossmann, let me just, I hope, make some helpful comments that will guide you in your response and assist me in this process. The first general observation I would make, aside from the fact that Dr. Arnold wants to address a particular factual situation and he would be here in any event, I suspect, for that, is that it's helpful to me, even if Dr. Arnold's qualifications are simply those of the average clinical psychologist, to have his expertise in that respect available to flesh out what I've heard and what has gone before. The fact that he, I may decide, does not have any special skill or extraordinary qualifications in the area of memory, memory recovery and whatever, doesn't seem to me, and I say this for your comfort, to be an impediment to him testifying, because in the final analysis it's a question of weight: firstly, what may I extract from what he's able to tell me, and what weight

do I attribute to it. So having said that, but it seems to me, with respect, that Dr. Arnold's been quite forthcoming about the areas that he is qualified in and the areas that he's not qualified in, and as it stands at the moment it seems to me that what he's essentially talking about is what any clinical psychologist would be capable of dealing with, especially if that person has had counseling experience and the like, and that in the area of memory his qualification don't transcend those of the ordinary clinical psychologist, and maybe no clinical psychologist is ever ordinary, but in any event the usual clinical psychologist practice. On that first note, what do you say?

MR. ROSSMANN: Well, My Lord, I think that the starting proposition for expert testimony, of course, is there will be different levels of expertise. What we're talking about in terms of qualifying an expert is does the person called to testify have knowledge over and above that of what the average person does, and I think certainly Dr. Arnold meets that test. Whether Dr. Arnold would claim to be the premier expert in North America, I don't know. He may or may not be. I see him shaking his head. But it's – it's a relative question, I suppose.

Bear in mind that the whole purpose of Dr. Arnold's testimony was twofold, one on the factual issue and the second on general background. As Mr. Winegarden pointed out in his questions, Dr. Arnold has not examined Mr. Roy, Dr. Arnold has not examined Mr. Jarvis or any other person about memory or other issues. He is not here to give an opinion on a person. He's here to provide some general background in memory – memory and recovery of memory for the assistance of the Commission and those of us participating, I suppose. It's – it's ultimately up to you, Mr. Commissioner, as to whether or not you find one witness more credible or less credible than another. Dr. Arnold is not here to fulfill that function. I think he's here to simply point out some of the pitfalls. And in terms of the areas we sought to call him, specifically relating in – for my purposes, relating to Mrs. – Ms. Valiaho's testimony was were the techniques employed by her generally accepted or not, and I suppose I would probably want to go farther and say, to the extent that she described them, were they properly applied or appropriately applied, and quite frankly she indicated she was not an expert and on cross-examination by Mr. Plaxton it turned out that she had very little training and, indeed, referred at one point to her technique as being somewhat holistic. So, in that respect I think Dr. Arnold can be qualified.

THE COMMISSIONER: That's another issue, though, and I agree that having had his answer to my last question clearly there's some divergence here, or it appears there may be some divergence, but I heard him carefully say that he uses the techniques that have been impugned by some, but he says they must be employed in a certain way –

MR. ROSSMANN: Right.

THE COMMISSIONER: – in order to get a reasonably accurate result, if I understand his response. I think we're agree that he does not claim expertise in the area of the effects of alcohol and recovery of memory as a consequence of alcohol. That seemed to me to surface from the answer given Ms. Knox during her cross-examination.

MR. ROSSMANN: M'hm.

THE COMMISSIONER: So we are, I think, a good deal more confined as to what he may be asked about in the course of giving his evidence. I say these things to you now in order to alert you to what my views are about how far he may go in his evidence, but it still would be helpful to me to have that evidence and, frankly, I think it's quite important that I also have his evidence on his views about visualization and those techniques and how they're utilized from at least the viewpoint of a clinical psychologist.

MR. ROSSMANN: M'hm.

THE COMMISSIONER: So on the factual basis, on his general knowledge as a clinical psychologist, and on the matter of the application of visualization, for example, I think his evidence is important.

MR. ROSSMANN: M'hm. That's –

THE COMMISSIONER: Now –

MR. ROSSMANN: I don't know if you have any other –

THE COMMISSIONER: No. What I'm doing is, and – and I hope you won't mind, I am literally sketching out what I think the parameters will be of this witness's evidence, and

MR. ROSSMANN: I understand.

THE COMMISSIONER: – unhappily for you you're standing there while I'm doing it, but I just wanted to explore with you what I think should happen. Now, I need to know now because I'm going to adjourn for a few minutes, I need to know now if with the three definitions I've put before you you have any particular difficulty with any of those.

MR. ROSSMANN: I don't.

THE COMMISSIONER: Does anybody else? Because – my thanks to you for that.

MR. ROSSMANN: Thank you.

THE COMMISSIONER: I'm going to adjourn for a few minutes because I want counsel to have a chance to review what's happened so that when you come to ask your skilful questions in cross-examination you'll be able to focus on the areas that we've talked about, and that will be of assistance to Dr. Arnold as well, I'm sure, as we go through this process. So, Mr. Hesje, is there anything you wanted to add?

MR. HESJE: No.

THE COMMISSIONER: Right. Well, I'd suggest that we take 15 minutes and if you will check with counsel and if they need a bit more time to review this, that's fine. And my thanks to you, Doctor, for your candour in this and your assistance. Very well."

12. Interference With Witness

During a break in his testimony, Cst. Hartwig was approached by an individual and spoken to in an aggressive fashion. The Commissioner was informed of this incident and provided the following directions (March 16, 2004 vol. 41 p. 7886-7888):

> "THE COMMISSIONER: Well, before we proceed with that, I have one other comment to make. It's been reported to me that at one of the breaks someone spoke to Constable Hartwig and in a fairly aggressive fashion. Now I express no opinion about that, I don't know the circumstances. But I need to say to everybody in this room that I will not tolerate any interference with the witnesses that are appearing before this inquiry under any circumstances. It's essential that every witness be accorded respect and an opportunity to tell his or her story fully and accurately.
>
> Now I appreciate that emotions run high, there are people who have strong feelings about what happened and about the issues in this case, and I am fully aware of that. But I have to say to you, ladies and gentlemen, please be mindful that the purpose of the inquiry is, to the best of my ability, to get the facts and to draw what conclusions are proper in the circumstances.
>
> So even if you have some strong views one way or the other about any of the participants in the inquiry, please respect the process and please do not speak to the witnesses. If there is something you need to talk about, the witnesses are represented by counsel and Commission counsel is here, and if you have strong views about things, I understand that, but please keep them to yourselves, at least until the adjournment, so that you can go outside and chat with your friends or whoever you wish.
>
> I must say to you all that everyone involved in this process has been extraordinarily respectful and patient, and that includes the gallery, the people who are present here and have been present here have been very respectful of the process, and I greatly appreciate that.
>
> So let's maintain the environment we've had and ensure, as matters go forward, that we continue it and that we reach the appropriate conclusion without any unfortunate events, or any person feeling in the course of this, whoever she or he may be, that they have been set upon or in any way disturbed by something that someone may have said or done."

13. Second Application to Call Additional Witnesses

The Saskatoon City Police Association applied to call three witnesses: Maggie Bluewaters, Judy Butler and Lucinda Smith-Pratt. The application was based upon information gathered by the RCMP from Ms. Butler and Ms. Bluewaters. These individuals informed the RCMP of statements that Lucinda Smith-Pratt had allegedly made in the past which suggested that her husband, Gary Pratt, had admitted to her that he was involved with the death of Neil Stonechild. In her interview with the RCMP, Lucinda Smith-Pratt denied making such statements.

Commissioner Wright made the following oral ruling (March 16, 2004 vol. 41 p. 7901-7903):

> "THE COMMISSIONER: Very well. Well, I am going to deal with this matter now. I say initially, and I say this with the greatest of respect, that I don't think in my time as a judge I've ever had counsel proffer evidence that was triple hearsay. That's the case here.
>
> Judy Butler, who is one of the proposed witnesses, says that she was told by a friend, Maggie Bluewaters, another proposed witness, that Gary Pratt's present wife, Lucinda Smith-Pratt, had told Bluewaters earlier that Gary Pratt had admitted to his wife that he had killed his earlier wife, Marie Lamothe, and Neil Stonechild. The evidence is that Maria Lamothe died of alcohol overdose.
>
> The report was that Pratt was – had beaten up Neil Stonechild and left him in the bush. As I noted already, that does not accord with the evidence at this inquiry, evidence which has established independently the nature and scope of his injuries and where he was found.
>
> Bluewaters refuses to repeat what Gary Pratt's wife, Lucinda, is alleged to have told her. Lucinda, when she is alleged to have made the statements implicating her husband, was mentally distressed. She was arrested under *The Mental Health Act*. Mr. Pratt's wife now says that she falsely accused her husband. Her statements were made in anger. She stated to the RCMP that that was the case and that she does not believe Gary Pratt was responsible for Neil Stonechild's death. The RCMP has accepted that retraction or correction, as I understand their report.
>
> In any event, it seems to me, on the face of it, at least, that she could not be obliged to testify because of spousal privilege
>
> I cannot imagine evidence which would be more dubious or suspect than the testimony that is proposed to be given in this application. It is third-hand evidence, and in my respectful view absolutely unreliable and is inadmissible, even under the most expanded rules that I might apply.
>
> I add as an afterthought, that there is a certain element of mischief in the suggestion that this kind of evidence be proffered at this late date, and I can't say more than that, but to express my unhappiness that this has been offered at this late point, late time.
>
> In any event, the application is dismissed as to the proposal to call all three witnesses."

14. The Cross-Examination on Wire-tap Evidence

Counsel for Stella Bignell sought to cross-examine Cst. Senger on statements made by him in wire-tapped evidence. It was conceded that the statements were not inculpatory. Commissioner Wright made the following oral ruling (March 18, 2004 vol. 43 p. 8440-8442):

> "THE COMMISSIONER: Right. Then that assists me. Because let me say that during the interval, when we adjourned over the lunch hour, I had a chance to consider this on a more global basis and I'm very troubled by the thought that information obtained on an interception, authorized interception might be

utilized for the purpose of asking one of the people involved in the conversation questions that are not related to any inculpatory admissions, statements or evidence. Over the years as a judge, I've granted a number of interception orders, mostly in drug cases, but the secret interception and recording of the conversations of Canadian citizens is a very, very serious violation of one's privacy and one's rights as a citizen in this country. In my respectful view, a wiretap is obtained for a focussed, specific purpose: do the conversational exchanges between the persons targeted in the interception reveal evidence of guilt, criminal activity or unlawful conduct? Wiretaps, in my respectful view, were never intended to be used for other purposes. And frankly, and I only speak for myself, if I were asked to grant an interception order or a wiretap and I thought that the substance of the conversation might be utilized somewhere else for another purpose, I would impose strict conditions on the granting of the interception.

And I must say, Mr. Worme, that I am not at all comfortable with the suggestion that because the persons involved in the exchange of comments here may have made comments that were derogatory or critical of others should be a basis for having the document produced and questions asked about the contents of it, of one of the persons who was the target, or subject of the interception. And I'm not convinced at all that it's appropriate that it be used for that purpose here, absent any evidence of any inculpatory statements or admissions of guilt or responsibility as to Neil Stonechild. And as a consequence of that, I'm not prepared to allow you to ask questions of Constable Senger about the interception."

15. Directions on Closing Submissions

The Commissioner ruled that parties may file written submissions subject to the following guidelines:

(a) written submissions should not exceed 50 pages;

(b) case citations should be provided in footnotes;

(c) copies of cases are not required;

(d) references to evidence contained in the transcripts or exhibits should be set out in footnotes and should include the transcript volume and page numbers, the exhibit number, and if applicable, page number;

(e) lengthy excerpts from the transcripts or documents (more than 2 or 3 sentences) should not be included in the written submissions; a footnoted reference to the evidence is sufficient.

The Commissioner also imposed time limits on all submissions. The following parties were allowed 90 minutes for closing submissions: Stella Bignell, Federation of Saskatchewan Indian Nations, Saskatchewan Police Service, Larry Hartwig, Bradley Senger, Saskatoon Police Association, and Keith Jarvis. The remaining parties were allowed 60 minutes, namely: RCMP, Gary Pratt, Jason Roy.

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APPENDIX

Summary of Oral Rulings

At the conclusion of the evidentiary phase of the hearings, Commissioner Wright issued the following directions for the preparation of written submissions (March 18, 2004 vol. 43 p. 8504-8505):

> "THE COMMISSIONER: I should just say, Mr. Hesje, and without in any way anticipating, that it seems to me that I need to set down some guidelines, some parameters with respect to submissions. I want to say to counsel that when the time comes I do not need another set of Encyclopaedia Brittanica. I expect you to be disciplined in the text of your submissions and the kinds of things I'm talking about are that if, for example, you want to make references to portions of the evidence, and you certainly will be doing that many times, I presently think that that can be accomplished more conveniently by footnotes, and so it is with respect to documents unless there's a reference to a particular line or a passage, but I implore you not to – how can I put it – further impact on my ability to understand and follow what's happening here by blitzing me with paper. Please make your points and where you have to, make references to the evidence. I don't expect there will be any cases referred to here, but similarly it's never helpful to have two or three volumes of photocopies cases when a reference to a particular decision, and even the extraction of one page marked with highlighter will serve. I'm going to rely enormously on your good judgment and your self-discipline as you approach this task, because if you're prolix or unclear in your writing it's going to prolong the process and you run the greater risk that I won't understand, I won't get your point, and that would be very unfortunate because you've all worked very hard to get us where we are today. But this lies ahead and, Mr. Hesje, I'll try to map out some thoughts about this and ask you in due course to relay them to counsel. And I might say that this is a two-way street. If, when you get the guidelines, you're uncomfortable with something or you think it could be improved on, for heaven's sake, say so. I'm not so thick-skinned that I can't accept some criticism or some help, suggestions, as to how we can go about this more effectively."

Ruling on Standing and Funding

By an Order-in-Council dated February 21, 2003, I was appointed Commissioner of a Commission of Inquiry to inquire into the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan. Appended to the Order-in-Council were Terms of Reference which read as follows:

1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the province of Saskatchewan. The Commission shall report its findings and make such recommendations, as it considers advisable.
2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation related to the death of Neil Stonechild or any ongoing criminal or civil proceeding.
3. The Commission shall complete its inquiry and deliver its final report containing its findings, conclusions and recommendations to the Minister of Justice and Attorney General. The report must be in a form appropriate for release to the public, subject to *The Freedom of Information and Protection of Privacy Act* and other laws.
4. The Commission shall have the power to hold public hearings but may, at the discretion of the commissioner, hold some proceedings *in camera*.
5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.

Rules of Procedure and Practice were published by the Commission and included guidelines to determine which persons should be allowed to appear before the Commission and which should be allowed funding from the Treasury to assist in their participation in the Inquiry. The standing and funding guidelines read as follows:

> The Terms of Reference provide that the Commission shall have the responsibility to inquire into all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

Formal Written Rulings
Standing and Funding

I. Principles

1. Commission counsel has the primary responsibility for representing the public interest at the Inquiry including the responsibility to ensure that all interests that bear on the public interest are brought to the Commission's attention.

2. Parties are granted standing for the purpose of ensuring that particular interests and perspectives, that are considered by the Commission to be essential to its mandate will be presented; these include interests and perspectives that could not be put forward by Commission counsel without harming the appearance of objectivity that will be maintained by Commission counsel and which the Commission believes are essential to the successful conduct of the Inquiry.

3. The aim of the funding is to assist parties granted standing in presenting such interests and perspectives but is not for the purpose of indemnifying interveners from all costs incurred.

II. Criteria for Standing

1. The Commissioner will determine who has standing to participate in Commission proceedings and the extent of such participation. The Commissioner will determine applications for standing based on the following criteria:

   a. the applicant is directly and substantially affected by the Inquiry; or

   b. the applicant represents interests and perspectives essential to the successful conduct of the Inquiry; or

   c. the applicant has special experience or expertise with respect to matters within the Commission's terms of reference.

III. Criteria for Funding

1. The Terms of Reference provide that the Commissioner shall determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commissioner to have their legal counsel paid for by the Commission, and further, determine at what rate such counsel shall be paid for their services. The Commissioner will determine applications for funding based on the following criteria:

   a. the applicant has been granted standing or is a witness whose counsel has been granted standing for the purpose of that witness's testimony;

   b. the applicant has an established record of concern for and has demonstrated a commitment to the interest they seek to represent, they are directly or substantially affected by the Inquiry, or they have special experience or expertise with respect to matters within the Commission's terms of reference;

c. the applicant does not have sufficient financial resources to enable them adequately to represent that interest and require funds to do so; and

d. the applicant has a clear proposal as to the use they intend to make of the funds, and appears to be sufficiently well organized to account for the funds.

IV. Applications

1. Applications for standing shall be made in writing and shall include a statement of how the applicant satisfies the criteria for standing set out in these Guidelines.
2. Applications for funding shall be made in writing, supported by affidavit, and shall include the following:
    a. a statement of how the applicant satisfies the criteria for funding set out in these Guidelines;
    b. an explanation as to why an applicant would not be able to participate without funding;
    c. a description of the purpose for which the funds are required, how the funds will be disbursed and how they will be accounted for;
    d. a statement of the extent to which the applicant will contribute their own funds and personnel to participate in the Inquiry; and
    e. the name, address, telephone number and position of the individual who will be responsible for administering the funds and a description of the controls put in place to ensure the funds are disbursed for the purposes of the Inquiry.

Written applications for standing and funding should be submitted to the Commission of Inquiry by delivering a copy to the Inquiry's offices in Saskatoon, at the address set out below by no later than 4:00 p.m. on the 24th day of April, 2003.

The Commission of Inquiry Into Matters Relating
to the Death of Neil Stonechild
1020 - 606 Spadina Crescent East
Saskatoon, SK
S7K 3A1

A party granted full standing has the following rights:

1. access to documents relevant to the Inquiry collected by the Commission subject to the Rules of Procedure and Practice;

2. advance notice of documents which are proposed to be introduced into evidence;
3. advance provision of statements of anticipated evidence;
4. a seat at counsel table;
5. the opportunity to suggest witnesses to be called by Commission counsel, and if Commission counsel declines to do so, the opportunity to apply to me to call such witness;
6. the opportunity to apply to me to lead the evidence of a particular witness if the Commission counsel declines to do so;
7. the opportunity to cross-examine witnesses on matters relevant to the basis upon which standing was granted;
8. the opportunity to review transcripts at Commission offices (a copy of the transcript may be purchased from the court reporter), (the transcript will be posted on the Commission's web site and will be available to the public);
9. the opportunity to make closing submissions; and
10. the opportunity to apply for funding.

In order to obtain standing an applicant is required to satisfy the following criteria:

a. the applicant is directly and substantially affected by the Inquiry; or
b. the applicant represents interests and perspectives essential to the successful conduct of the Inquiry; or
c. the applicant has special experience or expertise with respect to matters within the Commission's terms of reference.

In order to obtain funding an applicant must satisfy the following criteria:

a. the applicant has been granted standing or is a witness whose counsel has been granted standing for the purpose of that witness's testimony;
b. the applicant has an established record of concern for and has demonstrated a commitment to the interest they seek to represent, they are directly or substantially affected by the Inquiry, or they have special experience or expertise with respect to matters within the Commission's terms of reference;
c. the applicant does not have sufficient financial resources to enable them adequately to represent that interest and require funds to do so; and
d. the applicant has a clear proposal as to the use they intend to make of the funds, and appears to be sufficiently well organized to account for the funds.

Applications for standing are required to be made in writing and to establish how the applicant satisfies the criteria for standing. Applications for funding must be made in writing supported by an affidavit and include the following requirements:

a. a statement of how the applicant satisfies the criteria for funding set out in these Guidelines;

b. an explanation as to why an applicant would not be able to participate without funding;

c. a description of the purpose for which the funds are required, how the funds will be disbursed and how they will be accounted for;

d. a statement of the extent to which the applicant will contribute their own funds and personnel to participate in the Inquiry; and

e. the name, address, telephone number and position of the individual who will be responsible for administering the funds and a description of the controls put in place to ensure the funds are disbursed for the purposes of the Inquiry.

Notice of the standing and funding hearing was published in various newspapers in the Province of Saskatchewan and required that applications be submitted in writing to the Inquiry offices by April 24, 2003.

Seven applications for standing were filed. Six of the applicants also sought funding in the event they were given standing. The applications were supported in all but one case by affidavit. The RCMP filed a very brief two-page memo noting its role in the investigation which followed Mr. Stonechild's death. Counsel indicated that the focus of the Royal Canadian Mounted Police interest in this matter related to its investigation. I understood him to say that it was not anticipated he would participate in that portion of the Inquiry related to the circumstances surrounding the death of Mr. Stonechild and the subsequent investigation by the Saskatoon Police Service. He noted, however, and quite properly, that questions may arise which relate to the earlier events and which might necessitate a request that he be allowed to ask questions in addition to those that would normally apply to the RCMP role.

All of the applicants are represented by counsel. Each made a brief submission and answered questions. Each appeared to be well informed as to the issues and the objectives of the Inquiry.

The Standing Applications

1. Stella Bignell, the mother of the late Neil Stonechild.
2. Constable Larry Hartwig. Constable Hartwig is a member of the Saskatoon Police Service. It is suggested he had contact with Mr. Stonechild on the evening of November 24, 1990.
3. Constable Bradley Raymond Senger. He is a member of the Saskatoon Police Service. It is suggested he had contact with Mr. Stonechild on the evening of November 24, 1990.

4. Saskatoon Police Service. This is the municipal police force which serves the City of Saskatoon.
5. Saskatoon City Police Association. The Association is a trade union and represents the rank and file uniform members of the Saskatoon Police Service.
6. Royal Canadian Mounted Police.
7. Federation of Saskatchewan Indian Nations. The Council of the Federation comprises the aboriginal chiefs in the Province of Saskatchewan. It is actively involved in Justice matters affecting aboriginal persons and particularly in advocating for its members where allegations have been made of mistreatment of aboriginal persons by law enforcement agencies.

Rulings on Standings

1. Stella Bignell. Ms. Bignell should clearly have standing at the Inquiry in light of her relationship to the deceased and her role as representative of the Stonechild family. She is granted full standing.
2. Constable Hartwig. Constable Hartwig is vitally interested in this matter having been considered at one juncture a suspect in the earlier investigation of Mr. Stonechild's death. He is granted full standing.
3. Constable Senger. The same comments apply to Constable Senger. He is granted full standing.
4. Saskatoon Police Service. The Service has a very obvious interest in this matter affecting as it does two of its members and the administration of justice in the City of Saskatoon. It is granted full standing.
5. Saskatchewan City Police Association. I am satisfied that the Association should, similarly, have full standing. The Association represents the interests of the bulk of the Police Service membership. Constables Hartwig and Senger are members of the Association. It acts as a mediator and advocate for its members. It will have full standing.
6. Royal Canadian Mounted Police. The interest of the RCMP is directed to its subsequent investigation of the circumstances outlined above. It will have standing limited to the date it was appointed to investigate the Stonechild matter. If it appears earlier events have relevance to the RCMP's role then I will consider allowing it a broader mandate.
7. Federation of Saskatchewan Indians. The Federation has a sufficient interest in this matter to participate fully in the Inquiry. It will have full standing.

Rulings on Funding

The Terms of Reference contain the following provision:

> 5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.

Funding shall be allowed as follows:

1. **Stella Bignell.** I expect Ms. Bignell will be a witness at the Inquiry and certainly I anticipate she will be present throughout the Inquiry. She does not have any resources to retain and instruct counsel. She lives in northern Manitoba and must travel by public transportation for some distance. The fees and disbursements of her counsel, Mr. Worme, will be provided at no cost to her. I fix Mr. Worme's hourly rate at $192.00. Mr. Worme's compensation will apply on the basis of one hour's preparation for each hour of attendance at the Inquiry. Counsel will submit an invoice to Commission counsel on a monthly basis, the invoice to set out the nature of the work done and disbursements.

   Time spent by counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by Commission counsel may also be billed as preparation time. I am not disposed to allow funding for second counsel for any of the applicants.

   Ms. Bignell will be allowed her expenses for travel, accommodation and meals for the days she chooses to attend the Inquiry.

   Ms. Bignell asked that travel expenses of her daughters in Manitoba be paid. I am not disposed to grant such a request as she has a son living in Saskatoon.

2. **Constable Hartwig.** Constable Hartwig is entitled to funding for one counsel. Constable Hartwig disclosed his financial affairs including his assets and liabilities and I am satisfied that he does not have the resources to retain counsel. I fix Mr. Fox's hourly rate at $192.00. If an alternate counsel appears in his place that person's rate will be set at $125.00. Counsel will invoice the Commission in the same fashion as counsel for Ms. Bignell.

   Time spent by counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by Commission counsel may also be billed as preparation time. I am not disposed to allow funding for second counsel for any of the applicants.

3. **Constable Senger.** The comments I have made about Constable Hartwig will apply equally to Constable Senger.

4. **Saskatoon Police Service.** Mr. Rossmann made an eloquent plea for funding citing the burden the Inquiry will place on Saskatoon and the Saskatoon Police Service. It is true the Police Service did not initiate the Inquiry and that the Inquiry may have some implications for the Province overall. The Service is acutely interested in this matter as

two of its members feature prominently in it. Be that as it may, the legal costs of the Service will not be significant save for the fact that they fall on the taxpayers of the City generally. That is so because the Service engaged a city solicitor to act for it. In the circumstances I am not disposed to grant funding.

5. **The Saskatoon City Police Association.** The Association has retained its regular counsel in this matter. It is apparent he has had a long standing connection with the Stonechild investigation and a good deal of knowledge about the circumstances surrounding it. The Association's desire to assist two of its members is understandable. The cost of doing so should not be borne by the provincial treasury particularly as Constables Hartwig and Senger are represented by counsel funded by the Commission. Funding is denied.
6. **Royal Canadian Mounted Police.** The RCMP do not seek funding.
7. **Federation of Saskatchewan Indian Nations.** It appears from the Federation brief that the funds it receives from government will not be available to assist in its participation here and that it will not likely be able to appear if it does not have funding. Funding is granted. Counsel's hourly rate is set at $192.00. The directions as to payment for one hour preparation for each hour of participation in the Inquiry hearings applies also, and invoicing will be provided in the same manner as directed above. My comments as to alternate counsel also apply and that person's rate is set at $125.00 an hour.

Time spent by counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by Commission counsel may also be billed as preparation time. I am not disposed to allow funding for second counsel for any of the applicants.

Conclusion

I appreciate that not every eventuality can be anticipated. Circumstances may require that the bases for funding be re-visited at a later date. Counsel will have leave to apply for directions as they may be advised. Any such application shall be in writing and the other parties shall be served with copies of it. My thanks to counsel for their thorough and well prepared briefs and for their submissions on April 30, 2003.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 13th day of May, 2003.

Mr. Justice David H. Wright
Commissioner

Addendum

Mr. Worme advised me during the course of the standing and funding applications on April 30, 2003 that he represented the Stonechild family and a Mr. Jason Roy. It has been suggested that Mr. Roy has personal knowledge of Mr. Stonechild being involved with the members of the Saskatoon Police Service on November 24. He apparently brought this information to the attention of Mr. Worme in December soon after Mr. Stonechild's body was discovered. Mr. Worme asked for some guidance in determining whether it would be appropriate for him to continue to act for the Stonechild family and represent Mr. Roy. I understand Mr. Roy will be a significant witness during the Inquiry hearings. I indicated to him, as I do now, that in my respectful view, it would not be appropriate for him to represent both parties. In light of his appearance for the Stonechild family I gather that Mr. Roy will likely be advised that he should retain other counsel. I hope this answers Mr. Worme's question to his satisfaction.

Mr. Worme may wish to advise Mr. Roy that the Rules of the Commission allow for the appointment of counsel for a witness in the appropriate case and that the Rules may also allow for funding of such counsel. Any such request, of course, would have to be made by a formal application to the Commission.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 13th day of May, 2003.

Mr. Justice David H. Wright
Commissioner

Application of Jason Roy

The applicant will appear as a witness at the Inquiry. He has indicated, on several occasions, that he has personal knowledge of Neil Stonechild's involvement with members of the Saskatoon Police Service on November 24, 2000.

He has retained counsel. He now applies for funding for his legal representation as a witness. He also seeks standing as a party in the Commission hearings.

Mr. Roy is unemployed and has no financial resources. Given the potential importance of his evidence his presence as a witness before the Commission is essential. He meets the criteria set by the Commission for funding in his capacity as a witness. I refer to the Terms of Reference and in particular, paragraph 5:

> 5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.

Ruling as to Funding

Mr. Roy is entitled to funding with respect to his legal representation as a witness. The funding will apply to the days when Mr. Roy appears as a witness at the Inquiry. Counsel's compensation will apply on the basis of one hour's preparation for each hour of attendance at the Inquiry. Time spent by his counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by the Commission counsel may also be billed as preparation time.

I have reviewed Mr. Winegarden's material and his submission with respect to his hourly rate. Given counsel's experience and length of time at the, Bar, it is appropriate to set his hourly rate at $145.00. If alternate counsel appears for Mr. Winegarden that person's hourly rate will be fixed at $125.00.

Counsel will submit an invoice to Commission counsel on a monthly basis, the invoice to set out the nature of the work done and disbursements.

Ruling as to Standing as a Party

In his affidavit Mr. Roy, after dealing with his role as a potential witness makes these statements:

> 4. THAT I have come to believe that the Justice system in Saskatchewan is designed to control First Nations people and not to work on our behalf. I believe there is no avenue for people like myself to inform and direct the actions of the justice system in Saskatchewan.
>
> 5. THAT since the information I have has come to public light, I have spoken with many other First Nation people about the incident in question and about the justice system in general. It is my conclusion that there are many First Nations people like myself who feel alienated from the justice system and who feel that the authorities would rather incarcerate First Nations people than act in their behalf.

6. THAT I am committed to offer all my personal knowledge and experiences as a First Nations person to help in any investigation into the death of Neil Stonechild and to aid this Commission in drawing its conclusions.

Mr. Roy's offer of assistance is welcome. It appears he can assist the Commission significantly by appearing as a witness.

With respect, there is no evidence he represents, officially or unofficially, First Nations people beyond himself. There are those who do, including the Federation of Saskatchewan Indian Nations. Mr. Roy is not qualified to investigate the circumstances surrounding the death of Neil Stonechild or the subsequent investigation.

It is not necessary or appropriate to add Mr. Roy as a party to the inquiry.

Conclusion

I appreciate that not every eventuality can be anticipated. Circumstances may require that the bases for funding be re-visited at a later date. Counsel will have leave to apply for directions as they may be advised. Any such application shall be in writing and the other parties shall be served with copies of it.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 13th day of June, 2003.

Mr. Justice David H. Wright
Commissioner

Application for Funding for Alternate Counsel for Stella Bignell

Ruling

Ms. Bignell sought funding initially for two counsel, Mr. Worme and Mr. Curtis. I did not allow two counsel. There was no request for funding for alternate counsel although other parties to the inquiry did make such a request. In some instances I set rates of compensation for such persons.

Ms. Bignell now makes formal application through her counsel, Mr. Worme, to set compensation for alternate counsel with respect to her participation in the hearing. The request is a reasonable one especially in light of the directions I have given as to other parties. The hourly rate for alternate counsel is set at $125.00 and the directions that were granted with respect to other parties will apply to Ms. Bignell's counsel as well.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 25th day of June, 2003.

Mr. Justice David H. Wright
Commissioner

Ruling as to Removal of Counsel for the FSIN

Introduction

This is an application to remove Robertson Stromberg and Chris Axworthy, Q.C. particularly, as counsel for the Federation of Saskatchewan Indian Nations. The Federation is a party to the inquiry established to investigate the death of Neil Stonechild and the investigation which followed.

The Facts

Neil Stonechild, an aboriginal youth, was found dead on the outskirts of Saskatoon on November 27, 1990.

On February 21, 2003, an order-in-council was passed establishing a judicial inquiry into the Stonechild matter. The terms of reference set out in the order read as follows:

1. The Commission of Inquiry appointed pursuant to this Order will have the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the province of Saskatchewan. The Commission shall report its findings and make such recommendations, as it considers advisable.
2. The Commission shall perform its duties without expressing any conclusion or recommendation regarding the civil or criminal responsibility of any person or organization, and without interfering in any ongoing police investigation related to the death of Neil Stonechild or any ongoing criminal or civil proceeding.
3. The Commission shall complete its inquiry and deliver its final report containing its findings, conclusions and recommendations to the Minister of Justice and Attorney General. The report must be in a form appropriate for release to the public, subject to *The Freedom of Information and Protection of Privacy Act* and other laws.
4. The Commission shall have the power to hold public hearings but may, at the discretion of the commissioner, hold some proceedings *in camera*.
5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.

Certain individuals and organizations applied for standing at the inquiry. Some also sought funding. The Saskatoon City Police Association (the Association) represents uniform members of the Saskatoon Police Service below the rank of inspector. It was granted standing as was the Federation of Saskatchewan Indian Nations on May 13, 2003. The latter organization is represented by Robertson Stromberg and Ralph Ottenbreit, Q.C., in particular.

The material filed by Robertson Stromberg on the application for standing and funding on April 24, 2003 contained the following statement (Appendix A):

> 8. Chris Axworthy, Q.C. will be responsible for administering the said funding.

The application was followed by a letter of April 28, 2003 from Mr. Ottenbreit to Commission counsel. It attached the curriculum vitae of Messrs. Axworthy and Ottenbreit and contained this information:

> I can advise that I will be counsel at the Inquiry if standing is granted. **Chris Axworthy will be assisting the process by helping to prepare for the Inquiry and any daily testimony.** He will not appear as counsel. My regular hourly rate is $220.00. Chris Axworthy's regular hourly rate is $250.00. I expect that a maximum of two hours of preparation time will be required for each hour of inquiry time if funding for one counsel is approved… (emphasis added)

Mr. Axworthy's curriculum vitae indicates that he held the office of Minister of Justice and Attorney General from 1999 to 2003, Minister of Aboriginal Affairs from 2001 to 2003, and was a member of the Legislative Assembly for Saskatoon-Fairview from 1999 to 2003.

On May 1, 2003 Mr. Plaxton, counsel for the Association, wrote to Robertson Stromberg. The letter reads as follows:

> I am writing at this time to make certain inquiries concerning your firm's representation of the FSIN at the above-noted inquiry. These are not only my concerns but also concerns of Messrs. Watson and Fox.
>
> Our concerns arise out of the association of Mr. Chris Axworthy, Q.C. with both your firm and this file. These concerns relate most specifically to the Stonechild matter, which of course was actively under consideration by the Department of Justice while Mr. Axworthy was Minister of Justice.
>
> In order for us to make a determination as to how to deal with the matter, I would ask you [to] (sic) provide us with the following information:
>
> 1. The nature of Mr. Axworthy's association with your firm and how long the same has been in place.
> 2. What involvement Mr. Axworthy has had with this client and this matter and how long he has been so involved.
> 3. What involvement you anticipate he will have with this client and this matter in the future.
>
> Our concern of course is the perception of a conflict of interest not only by individual clients, but also the public at large. I would suggest this is especially pertinent in a matter such as the one at hand.
>
> I would appreciate your early advice so that we are able to deal with this issue if necessary without delaying any of the Inquiry's proceedings.
>
> I thank you for your attention.

On May 2, 2003, he followed with a second inquiry. It reads as follows:

> Further to our telephone conversation yesterday, I would be obliged if you could get back to me with a written response to the questions posed in our 1st of May correspondence. As mentioned, I would like to have the same at hand to discuss the matter with other counsel and my clients.
>
> From our conversation, I understand the fact to be Mr. Axworthy was originally going to act on behalf of the FSIN at the Stonechild Inquiry. From this, I assume he has acted on the file and/or offered advice concerning same. Please correct me if I am wrong.
>
> I further have your advice that although you are seeking funding for senior and junior counsel, you would not be asking for Mr. Axworthy's time to be compensated by the Commission. From this, it would appear you intend to have Mr. Axworthy continue his involvement in this matter, although not actively at counsel table. Please correct me if I am wrong.
>
> Again, I would appreciate you getting back to me as soon as you can and thank you in advance for your consideration.

On May 2, 2003, Mr. Ottenbreit forwarded two fax communications to Mr. Plaxton. The first reads as follows:

> Thank you for your fax of May 1, 2003.
>
> I have several observations.
>
> The inquiry is not an adversarial proceeding. It is inquisitorial. The issues raised by you should be taken in this context. Moreover, the object of the inquiry is not to find fault. Your clients' concerns should also be taken in this context.
>
> I expect that the evidence that the Commission will hear will come primarily from the Department of Justice and that there will be full disclosure by them. This will happen in any event whether Mr. Axworthy was the Minister or not. Every party will therefore have access to the same information from the Department of Justice. The fact that Mr. Axworthy is associated with our firm should therefore not prejudice your clients and those of Messrs. Watson and Fox.
>
> At one point prior to the standing hearing, we believed that Mr. Axworthy may be able to assist in the preparation for the inquiry after disclosure was given, although it was not contemplated he would appear as counsel before the inquiry. After further consideration we determined that Mr. Axworthy should have no part in this proceeding. Consequently at the hearing on April 30th I indicated to Justice Wright that we sought funding for only two lawyers, David Bishop and me. I confirmed then that only two of us would be working on this matter. I reiterate this and assure you that Mr. Axworthy will not be involved in any preparation for or appearance before the inquiry nor assist either Mr. Bishop or me in any other way with respect to our representations before the inquiry.
>
> I also point out that Mr. Axworthy having been a Minister has a ministerial obligation of confidentiality related to his duties as Minister. This obligation is a

> continuing one which he takes seriously. He and the other members of our firm are mindful of this and I can advise that this obligation has been met and will continue to be met.
>
> Insofar as the three questions set out in your letter are concerned, you know that I cannot provide you answers to all of these because of confidentiality obligations with respect to our client. However, I can advise that Mr. Axworthy joined our office in early February, 2003. He is not a partner. He had resigned as Minister around January 21, 2003.
>
> Our office has only very recently been retained on this matter.
>
> I also observe that Justice Wright is an experienced Judge who is highly regarded. I do not believe that Mr. Axworthy's association with our firm will make a bit of difference as to how he conducts this inquiry and subsequently makes findings. I have the utmost confidence that he will be objective, impartial and fair.
>
> Mr. Axworthy did not sign the Order in Council for this inquiry nor did he set the terms of reference. That was done by Mr. Nilson.
>
> It is my belief that it would be in everyone's interest that the parties are able to have the counsel they have chosen represent them. To do otherwise would arguably impose an actual prejudice in order to avoid a perceived one and an actual interference in the conduct of the inquiry.
>
> Lastly, I understand your clients' concern with the upcoming inquiry. I'm sure that it is very stressful for their members. I often represent police officers who are the subject of investigations, criminal or otherwise and I know first hand the emotional toll these difficult matters take on them.
>
> I trust this addresses your concerns.

The second fax states this:

> Thank you for your fax letter of May 2nd. I enclose my letter response to your letter of May 1st.
>
> You have our conversation of May 1st wrong. I specifically told you yesterday that Mr. Axworthy would not be acting as counsel at the Inquiry. What I did tell you yesterday is set forth in the third large paragraph of my enclosed letter.
>
> Insofar as Mr. Axworthy offering advice on the Stonechild matter, I believe that the only work done to date is in respect of the standing and funding application and I prepared that. The actual submission text was prepared by FSIN in house. Mr. Axworthy has acted to facilitate my communications and instructions with respect to that application.
>
> The nature of Mr. Axworthy's further involvement on this matter is set forth in the third large paragraph of my enclosed letter.
>
> I trust this answers your inquiries.

Mr. Plaxton wrote to Mr. Ottenbreit on May 6, 2003, and made these comments:

> Thank you for yours of the 2nd of May. I have had an opportunity to discuss this issue further with my clients.
>
> The Department of Justice is not a party or a proposed party to the Inquiry. Further, we have no guarantee that all parties will have access to the same information from the Department of Justice.
>
> Above and beyond this however, we believe your firm finds itself in an insurmountable conflict of interest, both actual and perceived. Accordingly, we must request your firm generally, and Mr. Axworthy specifically, cease acting for the FSIN, directly or indirectly in the Stonechild Inquiry or any other matters pertaining thereto.
>
> We believe the FSIN will be able to retain alternate counsel at this early date without any real inconvenience as not much has yet taken place on the file.
>
> My client makes this request on its own behalf and on behalf of its members.
>
> I would ask the favour of an early reply so that we may apply to the Commissioner for a ruling, if necessary.
>
> I thank you for your attention.

Ultimately, Mr. Ottenbreit replied on May 14, 2003. His reply reads as follows:

> I have now had an opportunity to consult with my client. Our client wants our office and specifically me as their counsel for the inquiry. Accordingly, we will not be stepping back from this matter.
>
> We disagree with your comments that our firm has an insurmountable conflict of interest on this matter.
>
> Conflicts in the legal sense usually arise in two fashions. A conflict results in relation to confidential information or loyalty to a client. In either of these senses, there is no conflict on this matter.
>
> Any information which Mr. Axworthy's officials or he would have received on this matter would have come as a result of various police investigations pursuant to a public duty respecting this matter rather [than] (sic) any direct or indirect solicitor/client relationship which he or anyone else in Justice had with the two police officers, your client or any other party at the inquiry. Although there is always the risk that the Department of Justice has some information which will not for some reason be given to the inquiry, this is highly unlikely and I am assured by the Department that any disclosure they make to anyone will go through Mr. Hesje. Presumably then any information gleaned from any of the investigations done by or at the request of the Department of Justice will at some point become public at this inquiry.
>
> It is disingenuous to raise the alarm about the use of information which Mr. Axworthy may or may not have as a result of his being Minister where the very inquiry in which your clients will participate will presumably bring all that information

to light for the public to see. Nevertheless we can assure that none of any information which Mr. Axworthy would have had access to while he was Minister has been disclosed to us or our client nor will it be disclosed to us or our client.

One of your co-counsel raised the issue of Chinese walls being put up with respect to confidential information. We are prepared to take steps that are reasonable to allay any of your concerns in this regard notwithstanding our earlier comments and notwithstanding the fact that we believe it would be overkill to do so. Mr. Axworthy comes to our office with none of the regular risk factors which would accompany lawyers transferring from one firm to another and which would have a bearing on disclosure of confidential information. He comes with none of the Justice files or material. He comes with no staff who would have worked on any of the Justice files on this matter. In short he comes only with what he can remember and he is already bound not to disclose that pursuant to his ministerial duty.

With respect to the obligation of loyalty, it has often been stated that the relationship of counsel and client requires clients typically untrained in the law and lacking the skill of advocates to entrust the management of their cases to counsel who act on their behalf. There should be no room for doubt about counsel's loyalty and dedication to the client's case. Mr. Axworthy while he was Minister had no a (sic) duty of loyalty to your client or the two police officers who seek to be parties or to the R.C.M.P. or to the FSIN or to any other party or potential party. In short, his loyalty was a public one to carry out his ministerial duties for the public good. In that sense we believe that Mr. Axworthy has not breached any duty of solicitor's loyalty to anyone. Mr. Axworthy's public duty as Minister ceased on January 21, 2003.

We fail to understand how his public duties prior to January 21, 2003 can somehow circumscribe our involvement with the inquiry because of his present association with our firm.

Your comments suggest that you perceive some unfairness to your clients as a result of our acting for our clients. We point out again that Mr. Axworthy played no favourites with any party to the inquiry nor did he shepherd the Order in Council setting up the Inquiry through Cabinet. Accordingly, he did not set the terms of reference for the inquiry. That was done by Mr. Nilson who as acting Minister had the final decision. The inquiry was in fact publicly announced by Eric Cline, Q.C.

Presumably your complaint is that Mr. Axworthy's actions as Minister of Justice, i.e. his public duty, somehow conflicts with or is inimical to your clients' interests. This also presumes that the performance of his public duty is adversarial to your clients and their interests. This is not so. Moreover, if I follow your logic, our firm is now visited with this supposed conflict because of his association. We do not see this as a valid argument.

A party should not be deprived of his or her choice of counsel without good cause. The concepts of conflict of interest and the countervailing value that a litigant should not be deprived of their counsel of choice are really two aspects of

> protecting the integrity of the legal system. If a party could achieve an undeserved tactical advantage over an opposing party by bringing a disqualification motion or seeking other "ethical relief" using "the integrity of the administration of justice merely as a flag of convenience" fairness of the process would be undermined. Your suggestion that our firm has an insurmountable conflict despite Mr. Axworthy's stringent confidentiality obligations and despite the fact that neither I nor Mr. Bishop have any personal knowledge whatsoever of your clients or any party or their particular affairs, promotes form at the expense of substance and tactical advantage instead of legitimate protection.
>
> I point out again that the process of the inquiry is inquisitorial rather than adversarial. Our client is concerned as your client's (sic) are to determine what happened with Neil Stonechild.
>
> Accordingly, we will proceed to act on our client's behalf.

The Association counsel then wrote to Commission counsel on May 23, 2003 as follows:

> Due to what the Association perceives to be a conflict of interest I have requested the Robertson Stromberg firm generally and Mr. Chris Axworthy, Q.C. specifically cease acting for the F.S.I.N. directly or indirectly in the within matter or any matters pertaining thereto. Mr. Ottenbreit has declined my request, accordingly I wish to make application for an order removing them as counsel.
>
> I would ask you seek the Commissioner's directions as to whether this application should be made to the Commissioner or the Court of Queen's Bench. If the application should be made to the Commission please advise as to dates that would be acceptable for same.
>
> I thank you for your attention.

Mr. Ottenbreit replied briefly on the same day as follows:

> I have received Mr. Plaxton's letter of May 23, 2003 asking for directions from the Commissioner as to his application to have us removed from the Inquiry. In view of his request, we may have representations to make with respect as to what the proper forum would be. We will get back to you early next week.

Mr. Ottenbreit delivered a more detailed response on May 26, 2003. It reads:

> Respecting Mr. Plaxton's letter of May 23, 2003, I can advise as follows:
>
> 1. I believe the terms of reference on this inquiry are wide enough to allow Mr. Justice Wright to determine who may appear at the inquiry and conduct the case. In that sense, I take the view that the alleged conflict as it is presented is within his jurisdiction and should be heard by him.
> 2. I view with some dismay the apparent inaccuracy contained in Mr. Plaxton's letter to the effect that Chris Axworthy continues to act for the FSIN on this matter or that we have declined Mr. Plaxton's request in this regard. The letter is misleading in that it leaves the impression that Mr. Axworthy continues to act on this matter and that I have declined Plaxton's request that he cease to

> act. We made it clear that Mr. Axworthy was not going to be involved in this matter on a number of occasions as follows:
>
> (a) on April 30, 2003 at the standing and funding hearings when I indicated Mr. Bishop and I would act on this matter;
>
> (b) on May 1, 2003 in a telephone conversation with Mr. Plaxton where I indicated unequivocally Mr. Axworthy would not be involved in this matter;
>
> (c) on May 2, 2003 by letter to Mr. Plaxton where I indicated unequivocally that Mr. Axworthy would not be involved in this matter.
>
> 3. In our view the only issue with respect to Mr. Plaxton's complaint is whether our firm as opposed to Mr. Axworthy specifically may appear on this matter. In this regard at the time of the funding application it was no secret that Mr. Axworthy was associated with our firm. Although the proposal for funding originally made reference to Mr. Axworthy, none of the parties objected at the funding application to the association of Mr. Axworthy and our firm.
>
> I am under separate cover sending back the completed Undertaking of Counsel.
>
> I would be pleased therefore to appear before the Commissioner at a convenient time to address this matter.

Mr. Plaxton then wrote again on May 27, 2003 to Commission counsel and stated:

> I have received a copy of Mr. Ottenbreit's 26th of May correspondence to yourself. As indicated in the correspondence our request was both the Robertson Stromberg firm and Mr. Axworthy cease acting for the FSIN directly or indirectly concerning this matter. This was not a disjunctive but a conjunctive request in that from our perception, it is necessary to mitigate the harm caused that both the firm and Mr. Axworthy discontinue any association. By way of reference, I believe whether or not Mr. Axworthy is actually handling the file, he being a member of the firm is legally deemed to be acting for the client.
>
> It appears the proposed participation of Mr. Axworthy in this matter has changed dramatically from the outset to present. It does appear though he has had some actual involvement in same prior to the standing applications. The timing and full extent of same is not known to us. Mr. Ottenbreit in correspondence after the conflict issue was raised mentioned the possibility of separation walls concerning Mr. Axworthy, this however is too little, too late and, in any event, in no way addresses the issue of a cabinet minister and/or his law firm appearing at an Inquiry so soon after he left his post.
>
> I will be forwarding my materials as soon as possible in relation to our application.
>
> I thank you for your attention.

I have reproduced the particulars of Mr. Axworthy's history as Minister and the entire correspondence passing between counsel for the Association and the Federation and the Commission to provide a full understanding of the many complex issues raised in this application.

The Association ultimately advised that it wished to make a formal application to the Commission to remove Robertson Stromberg and Mr. Axworthy. That application was argued before me on June 9, 2003. The application was supported by counsel for Constables Hartwig and Senger and the Saskatoon Police Service. Counsel for Stella Bignell opposed the application for removal supporting the position of Robertson Stromberg and Mr. Axworthy.

Code of Professional Conduct

A Code of Professional Conduct was adopted by the Law Society of Saskatchewan. It does not have the effect of law but it is a highly persuasive set of guidelines with respect to the conduct of solicitors and a solicitor's duty to the client, fellow solicitors and the public.

The following provisions appear to be material to the present application if even only tangentially:

CHAPTER IV
CONFIDENTIAL INFORMATION

RULE

> The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and shall not divulge such information unless disclosure is expressly or impliedly authorized by the client, required by law or otherwise permitted or required by this Code.

COMMENTARY

...

Confidential Information Not to be Used

...

6. The lawyer shall not disclose to one client confidential information concerning or received from another client and should decline employment that might require such disclosure.

...

Disclosure Required by Law

...

14. The lawyer who has information known to be confidential government information about a person, acquired when the lawyer was a public officer or employee, shall not represent a client (other than the agency of which the lawyer was a public officer or employee) whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person.

CHAPTER V
IMPARTIALITY AND CONFLICT OF INTEREST BETWEEN CLIENTS

RULE

The lawyer shall not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the clients or prospective clients concerned, shall not act or continue to act in a matter when there is or is likely to be a conflicting interest.

COMMENTARY

...

Acting Against Former Client

8. A lawyer who has acted for a client in a matter should not thereafter act against the client (or against persons who were involved in or associated with the client in that matter) in the same or any related matter, or take a position where the lawyer might be tempted or appear to be tempted to breach the Rule relating to confidential information. It is not, however, improper for the lawyer to act against a former client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that person.
9. For the sake of clarity the foregoing paragraphs are expressed in terms of the individual lawyer and client. However, the term "client" includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work. It also includes the client of a lawyer who is associated with the lawyer in such a manner as to be perceived as practising in partnership or association with the first lawyer, even though in fact no such partnership or association exists.

CHAPTER VA
CONFLICTS OF INTEREST

A. Definitions

(1) In this Rule:

"client" includes anyone to whom a member owes a duty of confidentiality, **whether or not a solicitor-client relationship exists between them**; (emphasis added)

"confidential information" means information obtained from a client which is not generally known to the public;

"law firm" includes one or more members practising:

(e) in a government, a Crown corporation or any other public body, and...

...

COMMENTARY

1. ...

b. Government employees and in-house counsel

The definition of "law firm" includes one or more members of the Society practising in a government, a Crown corporation, any other public body and a corporation. Thus, the Rule applies to members transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same. Subrule (3) was included to reflect the particular employment structure of the federal government, but is not meant to alter the general principle that internal transfers within the government are not subject to review under the Rule.

"matter" means a case or client file, but does not include general "know-how" and, in the case of a government lawyer, does not include policy advice unless the advice relates to a particular case.

...

B. Application of Rule

(2) This Rule applies where a member transfers from one law firm ("former law firm") to another ("new law firm"), and either the transferring member or the new law firm is aware at the time of the transfer or later discovers that:

(a) the new law firm represents a client in a matter which is the same as or related to a matter in respect of which the former law firm represents its client ("former client"),

(b) the interests of those clients in that matter conflict, and

(c) the transferring member actually possesses relevant information respecting that matter.

(3) Subrules (4) to (7) do not apply to a member employed by the federal Department of Justice who, after transferring from one department, ministry or agency to another, continues to be employed by the federal Department of Justice.

Firm Disqualifications

(4) Where the transferring member actually possesses relevant information respecting the former client which is confidential and which, if disclosed to a member of the new law firm, may prejudice the former client, the new law firm shall cease its representation of its client in that matter unless:

(a) the former client provides written consent to the new law firm's continued representation of its client, or

(b) the new law firm establishes, in accordance with subrule (8), that:

(i) it is in the interests of justice that its representation of its client in the matter continue, having regard to all relevant circumstances, including:

(A) the adequacy of the measures taken under (ii),

(B) the extent of prejudice to any party,

(C) the good faith of the parties,

(D) the availability of alternative suitable counsel, and

(E) issues affecting the national or public interest, and

(ii) it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur.

Transferring lawyer disqualification

(5) Where the transferring member actually possesses relevant information respecting the former client but that information is not confidential information which, if disclosed to a member of the new law firm, may prejudice the former client:

(a) the member should execute an affidavit or solemn declaration to that effect, and

(b) the new law firm shall:

(i) notify its client and the former client, or if the former client is represented in that matter by a member, notify that member, of the relevant circumstances and its intended action under this Rule, and

(ii) deliver to the persons referred to in (i) a copy of any affidavit or solemn declaration executed under (a), and

(iii) notify its client and former client that if they have any objection to the new law firm's continued representation of its client that they may apply to the Law Society or a court of competent jurisdiction under subrule (8) within thirty (30) days of receipt of the material provided under this Rule and if no objection is taken within thirty days, they lose the right to apply to the Law Society under this Rule.

(6) A transferring member described in the opening clause of subrule (4) or (5) shall not, unless the former client consents:

(a) participate in any manner in the new law firm's representation of its client in that matter, or

(b) disclose any confidential information respecting the former client.

(7) No member of the new law firm shall, unless the former client consents, discuss with a transferring member described in the opening clause of subrule (4)

or (5) the new law firm's representation of its client or the former law firm's representation of the former client in that matter.

CHAPTER X
THE LAWYER IN PUBLIC OFFICE

RULE

The lawyer who holds public office should, in the discharge of official duties, adhere to standards of conduct as high as those that these rules require of a lawyer engaged in the practice of law.

COMMENTARY

Guiding Principles

1. The Rule applies to the lawyer who is elected or appointed to legislative or administrative office at any level of government, regardless of whether the lawyer attained such office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by failure on the lawyer's part to observe its professional standards of conduct.

Conflicts of Interest

2. The lawyer who holds public office must not allow personal or other interests to conflict with the proper discharge of official duties. The lawyer holding part-time public office must not accept any private legal business where duty to the client will or may conflict with official duties. If some unforeseen conflict arises, the lawyer should terminate the professional relationship, explaining to the client that official duties must prevail. The lawyer who holds a full-time public office will not be faced with this sort of conflict, but must nevertheless guard against allowing the lawyer's independent judgement in the discharge of official duties to be influenced by the lawyer's own interest, or by the interests of persons closely related to or associated with the lawyer, or of former or prospective clients, or of former or prospective partners or associates.
3. In the context of the preceding paragraph, persons closely related to or associated with the lawyer include a spouse, child, or any relative of the lawyer (or of the lawyer's spouse) living under the same roof, a trust or estate in which the lawyer has a substantial beneficial interest or for which the lawyer acts as a trustee or in a similar capacity, and a corporation of which the lawyer is a director or in which the lawyer or some closely related or associated person holds or controls, directly or indirectly, a significant number of shares.

...

Disclosure of Confidential Information

7. By way of corollary to the Rule relating to confidential information, the lawyer who has acquired confidential information by virtue of holding public office

should keep such information confidential and not divulge or use it even though the lawyer has ceased to hold such office. (As to the taking of employment in connection with any matter in respect of which the lawyer had substantial responsibility or confidential information, see Commentary 3 of the Rule relating to avoiding questionable conduct.)

...

Note 3 to this provision reads as follows:

3. Cf. generally the Rule relating to conflict of interest between lawyer and client. "When a lawyer is elected to ... (a) public office of any kind, or holds any public employment...his duty as the holder of such office requires him to represent the public with undivided fidelity. His obligation as a lawyer...continues; ...it is improper for him to act professionally for any person...[who] is actively or specially interested in the promotion or defeat of legislative or other matters proposed or pending before the public body of which he is a member or by which he is employed, or before him as the holder of a public office or employment." from Brand, *Bar Associations, Attorneys and Judges* (Chicago, 1956) p. 179.

CHAPTER XIX
AVOIDING QUESTIONABLE CONDUCT

RULE

The lawyer should observe the rules of professional conduct set out in the Code in the spirit as well as in the letter.

COMMENTARY

Guiding Principles

1. Public confidence in the administration of justice and the legal profession may be eroded by irresponsible conduct on the part of the individual lawyer. For that reason, even the appearance of impropriety should be avoided.

...

Duty after Leaving Public Employment

3. **After leaving public employment, the lawyer should not accept employment in connection with any matter in which the lawyer had substantial responsibility or confidential information prior to leaving, because to do so would give the appearance of impropriety even if none existed.** However, it would not be improper for the lawyer to act professionally in such a matter on behalf of the particular public body or authority by which the lawyer had formerly been employed. As to confidential government information acquired when the lawyer was a public officer or

> employee, see commentary 14 of the Rule relating to confidential information. (emphasis added)
>
> ...
>
> **Standard of Conduct**
>
> 10. The lawyer should try at all times to observe a standard of conduct that reflects credit on the legal profession and the administration of justice generally and inspires the confidence, respect and trust of both clients and the community.

The Legistlation

The Members' Conflict of Interest Act, S.S. 1993, c. M-11.11

The Act contains the following provisions:

> 4 A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or to seek to further the member's private interest, his or her family's private interest or the private interest of an associate.
>
> 8(1) The Executive Council, a member of the Executive Council or an employee of a department, secretariat or office of the Government of Saskatchewan or a Crown corporation, including a corporation in which the Government of Saskatchewan owns a majority of shares, shall not knowingly award a contract to or approve a contract with, or grant a benefit to, a former member of the Executive Council or to any of the former member's family until 12 months have expired after the date on which the former member ceased to hold office.
>
> (2) Subsection (1) does not apply to contracts of employment with respect to further duties in the service of the Crown.
>
> (3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

Law

The issue of disqualification of counsel by reason of conflict of interest has been addressed many times in Canada. The seminal decision is that of the Supreme Court of Canada in *MacDonald v. Martin*, [1990] 3 S.C.R. 1235. Mr. Justice Sopinka set down the law at p. 1243:

> In resolving this issue, the Court is concerned with at least three competing values. There is first of all the concern to maintain the high standards of the legal profession and the integrity of our system of justice. Furthermore, there is the countervailing value that a litigant should not be deprived of his or her choice of counsel without good cause. Finally, there is the desirability of permitting reasonable mobility in the legal profession. ...

He then identified two basic approaches to determine whether a disqualifying conflict of interest exists: (1) the probability of real mischief, or (2) the possibility of real mischief. He described these two approaches at p. 1246:

> …The first approach requires proof that the lawyer was actually possessed of confidential information and that there is a probability of its disclosure to the detriment of the client. The second is based on the precept that justice must not only be done but must manifestly be seen to be done. If, therefore, it reasonably appears that disclosure might occur, this test for determining the presence of a disqualifying conflict of interest is satisfied.

After an extensive review of the authorities, Mr. Justice Sopinka concluded that the appropriate test is the possibility of real mischief. He stated the test, with respect to confidential information, at p. 1260, as follows:

> …the public represented by the reasonably informed person would be satisfied that no use of confidential information would occur. …

Mr. Justice Cory, concurring in the result, reiterated the three competing values identified by Mr. Justice Sopinka and stated, at p. 1265, as follows:

> Of these factors, the most important and compelling is the preservation of the integrity of our system of justice. The necessity of selecting new counsel will certainly be inconvenient, unsettling and worrisome to clients. Reasonable mobility may well be important to lawyers. However, the integrity of the judicial system is of such fundamental importance to our country and, indeed, to all free and democratic societies it must be the predominant consideration in any balancing of these three factors.

In *Martin*, the Supreme Court was dealing with the disqualification of a lawyer in civil proceedings. The issue arises as to whether the competing values are different with respect to a public inquiry. The second and third values as identified by Mr. Justice Sopinka, would appear to be the same. The first value, the integrity of our system of justice, is not necessarily the same.

The interest at issue in a public inquiry was recently addressed by the Ontario Superior Court in *Aboriginal Legal Services of Toronto v. Shand Inquest*, [2003] O.J. No. 1117 (S.C. Div.Ct.). In that case, O'Driscoll J. adopted the following statements made by a coroner in disqualifying counsel at a coroners inquest, which disqualification was upheld by the Ontario High Court in *Cook v. Young*, unreported, November 8, 1989, at para. 5:

> …
>
> "Mr. Speid has a right to counsel. He has a right to professional advice, but he has no right to counsel who, by accepting the brief, cannot act professionally. A lawyer cannot accept a brief if, by doing so, he cannot act professionally, and if a lawyer so acts, the client is denied professional services. …
>
> …
>
> "Does this situation apply to inquests? As we heard in submissions, inquests are different, in focus, scope and rules from any other proceeding. But the same rules of fundamental or natural justice and fairness must be observed and must

> be seen to be operating at an inquest. Quite rightly it has been pointed out that inquests do not find fault or legal responsibility, rather they are fact-finding exercises. However, disputes regarding evidence, which might impact, for example on the reputation of an individual, can arise at an inquest. Therefore, it seems to me that a potential conflict in a lawyer's position is a valid consideration, although because of the non-fault-finding and unique nature of an inquest, the test to remove such lawyer might well be of a higher nature.

The court went on to adopt the following statement by the coroner in the case at issue at para. 6:

> ...
>
> "In my opinion the most appropriate test is the proper functioning of the process and the maintenance of public confidence. An inquest is a public process in which the administration of justice and the fairness of the process will be closely scrutinized.

The court upheld the disqualification of the lawyer and stated its conclusion as follows at para. 7:

> This is one of those occasions where reality does not govern but the governing factors are perception and optics. It is a matter of the maintenance of public confidence in the administration of justice and the avoidance of an appearance of impropriety. ...

In *Booth v. Huxter* (1994), 16 O.R. (3d) 528 (Gen. Div.), it was argued that because, there was no legal or monetary interest involved in a coroner's inquest, the rules of conflict of interest need not apply. In addressing this argument Moldaver J. stated at p. 536, the following:

> Secondly, I consider the proposed interpretation of the word "interest" to be somewhat naive and unrealistic. I have already touched upon the reasons for concluding that each of the Board and the officers has a very real and significant interest in the proceedings. The integrity, reputation, competence and professionalism of each had been placed under the spotlight of public scrutiny. To somehow suggest that such matters do not constitute interests worthy of preservation is to take a myopic view of the situation. One need only look at the laws of libel and slander to realize the importance of a person's reputation within our society. Here, the reputations of the officers and the Board are, in no small measure, under scrutiny.

The court also referred to the fact that the parties had been granted standing based on the separate interests they represent (p. 539).

I have been unable to find any case in which conflict of interest was alleged with respect to a former minister of the Crown.

Application

It is appropriate to quote from the language of the application:

> This is an application by the Saskatoon City Police Association to have the firm of Robertson Stromberg generally and Mr. Chris Axworthy, Q.C. specifically removed as counsel to the Federation of Saskatchewan Indian Nations in the matter within as well and matters pertaining to same. The applicant believes a number of other parties to the Inquiry will support it in this application.
>
> The applicant advances in support of its application a conflict of interest in Mr. Axworthy and the firm due to Mr. Axworthy's membership in same. The primary grounds for this submission lie in the fact Mr. Axworthy was the Minister of Justice for a number of years during which matters relevant to this inquiry were being considered by the department. During this period he would be privy to information, policies and decisions not known to the public. It is suggested the public would perceive this information could be available, advertently or otherwise, to the firm's clients.
>
> In addition to this the applicants submit Mr. Axworthy and the firm are again in a conflict of interest due to him or his firm accepting employment in connection with the matter with which he had substantial responsibility or confidential information prior to leaving his cabinet post.
>
> The applicants rely not only on the real possibility of conflict of interest but the appearance of conflict and circumstances that would lead the public to question the appropriateness of the firm continuing to act.

The applicant refers to a number of circumstances in support of its position:

- 30 September 1999 – Mr. Axworthy appointed Minister of Justice and Attorney General (News Release 30 September 1999)
- 16 February 2000 – Justice Minister Axworthy makes formal request to the RCMP to investigate circumstances of the deaths of Messrs. Naistus and Wegner and to review allegations concerning the complaint from Mr. Knight
- 24 February 2000 – It is reported the RCMP Task Force would also consider the Stonechild matter in due course (24 February 2000 Globe and Mail and StarPhoenix news reports)
- Spring 2000 – FSIN's leadership calling for a public inquiry into the justice system in Saskatchewan. These demands made in light of the deaths of Messrs. Wegner and Naistus (The Saskatchewan Indian – Spring 2000)
- 19 September 2000 – Justice Minister Axworthy directs an inquest into the death of Mr. Ironchild (Executive Council News Release 19 September 2000)
- 2 February 2001 – Justice Minister Axworthy directs an inquest into the death of Mr. Dustyhorn (Executive Council News Release 2 February 2001)

- 20 June 2001 – Justice Minister Axworthy questioned in the House concerning FSIN's demands for public inquiry into the justice system based primarily on the deaths of First Nations persons outside Saskatoon. Mr. Axworthy reports there have been discussions with FSIN and other groups. Mr. Axworthy reports there have been coroner's inquiries into the deaths of Messrs. Ironchild and Dustyhorn and that the reports out of these inquests have been well received by the First Nations and Métis communities (Hansard 20 June 2001)
- 27 June 2001 – Justice Minister Axworthy orders inquest into the death of Mr. Naistus (Executive Council News Release 27 June 2001)
- 26 July 2001 – Justice Minister Axworthy orders inquest into the death of Mr. Wegner (Executive Council News Release 26 July 2001)
- 12 October 2001 – Mr. Axworthy also named Minister of Aboriginal Affairs (Executive Council News Release 12 October 2001)
- 15 November 2001 – Mr. Axworthy announces commission on First Nations and Métis injustice reform (Executive Council News Release 15 November 2001)
- 22 February 2002 – RCMP receive Saskatoon Police Service records concerning Mr. Stonechild (Mr. Hesje's correspondence 30 May 2003)
- 21 January 2003 – Mr. Axworthy announces his resignation from cabinet and advises "I am currently exploring career opportunities in private life, including teaching law and work with an established Saskatchewan law firm". Mr. Nilson appointed acting Attorney General and Minister of Justice (Executive Council News Release 21 January 2003)
- 17 February 2003 – Mr. Cline appointed Minister of Justice (Executive Council News Release 17 February 2003)
- 20 February 2003 – Justice Minister Cline announces inquiry into the death of Mr. Stonechild and advises public prosecutions division has determined there is not sufficient evidence to lay charges in relation to the death of Mr. Stonechild (Executive Council News Release 20 February 2003)
- Robertson Stromberg announces Mr. Axworthy has joined their firm and advises: "Chris brings a deep understanding of intergovernmental and aboriginal law to our team" (advertisement from Saskatoon StarPhoenix 20 February 2003)
- 19 February – Order in Counsel signed establishing inquiry

The respondents do not dispute the correctness of any of these statements.

Mr. Axworthy swore an affidavit on June 5, 2003. I quote from the material portions:

> 2. On January 21, 2003 I resigned as Minister of Justice of Saskatchewan, a position which I had held for some years prior to that.
>
> 3. When I became Minister of Justice I considered my duties to be public ones. I swore an oath to keep confidential any information which I received in the course of my public duties.

4. I have not divulged either to the Federation of Saskatchewan Indian Nations, any lawyers or staff of Robertson Stromberg or anyone else the details of any information that I have received in my capacity of Minister of Justice either in respect of the subject matter of this inquiry or otherwise.
5. I joined the Robertson Stromberg firm in the first week of February, 2003. When I joined the firm I did not bring to the firm any files or other documentation or employees which had any connection with my duties as the Minister of Justice.

Lawrence Joseph, an officer of the Federation, swore an affidavit indicating his organization's desire that their present counsel continue to act. He concludes his deposition with this statement:

4. If the Robertson Stromberg firm is disqualified from acting on this Inquiry, this will be prejudicial to the FSIN.

Mr. Joseph does not say what prejudice there will be nor does he suggest that other competent and experienced counsel could not serve the Federation as effectively.

Analysis

It is appropriate that I repeat, at the outset, the statement which I made at the commencement of the application on June 9, 2003. In the event that I am persuaded that present counsel for the Federation should be removed, that will not impact upon the participation of the Federation of Saskatchewan Indian Nations. The Federation will be as fully a party to these proceedings as it has been to this point and will be entitled to retain and instruct counsel if other counsel is required. The application is not about diminishing or affecting the participation of the Federation. The narrow issue is whether in the circumstances prevailing here the Federation would be more appropriately represented by other counsel.

Res Judicata (Preliminary Objection)

The respondent Federation raised a preliminary objection to the application. Its contention is that the matter of the Robertson Stromberg/Axworthy engagement in this matter is *res judicata* inasmuch as no objection was raised to the participation of either during argument presented to me on the applications for standing and funding. With respect the objection is not tenable. I note also that standing and funding were granted to the parties not their counsel. In any event the defence of *res judicata* does not fit the circumstances prevailing here. In my view the objection is really that the applicant is estopped from complaining now when it said nothing at the hearing. As I have noted the objection is answered by the evidence of the Association's prompt request for clarification of Mr. Axworthy's role and the timeliness of its application. It did not rest on its oars. There is still abundant time for the Federation to find new counsel if that is necessary.

Shortly stated the Association says that when Mr. Axworthy moved to Robertson Stromberg he would have inevitably taken with him confidential information received while Minister of Justice and Attorney General respecting the death of Mr. Stonechild and other aboriginal persons in Saskatoon. It is not appropriate therefore that he be associated with any of the parties in this inquiry.

It is also suggested that the early references to Mr. Axworthy's involvement in the Robertson Stromberg file reinforce the theory that his value to the law firm arose from his involvement as Minister and Attorney General. One may ask what qualifications or expertise did he have as counsel that led to his participation in the inquiry. As a consequence, it is argued, I should infer an actual conflict of interest exists and that taints the involvement of Mr. Axworthy and Robertson Stromberg as Federation counsel.

Mr. Plaxton also argues that members of the public presented with Mr. Axworthy's history as Minister and Attorney General would question his involvement and that of his firm in this matter. The second prong to the Association's argument is that of public perception.

The applicant suggests that if steps had been taken at the outset to ensure Mr. Axworthy was removed from any involvement in the Federation file such as a Chinese Wall there would be much less concern. In fact, his role in the inquiry was emphasized from the beginning. It was only later that his involvement was minimized.

Counsel for the respondent prefaced his submissions on conflict of interest by referring to a number of cases that canvass a client's right to choose counsel. I refer to one in particular.

In *Manville Canada Inc. v. Ladner Downs* (1992), 88 D.L.R. (4th) 208, aff'd 100 D.L.R. (4th) 321, Esson C.J. states, at p. 223:

> ...Such a remedy necessarily imposes hardship and, given that the party deprived of its representative is an innocent bystander in an issue between its lawyer and the opposite party, some degree of injustice on the innocent party. **The imposition of such hardship and injustice can only be justified if it is inflicted to prevent the imposition of a more serious injustice on the party applying. It follows that the injunction should be granted only to relieve the applicant of the risk of "real mischief", not a mere perception.** (emphasis added)

Chief Justice Esson continues at p. 224:

> ...No doubt, some of those applications are brought to prevent a risk of real mischief. **But can there be any doubt that many are brought simply because an application to disqualify has become a weapon which can be used, amongst many others, to discomfit the opposite party by adding to the length, cost and agony of litigation.** If that becomes a regular feature of our litigation it would not likely do much to improve the profession's standards in an area in which there seem to have been few serious problems. But it could do much to further reduce the court's ability to get to judgment in a timely way. (emphasis added)

Robertson Stromberg argues there can be no conflict of interest as Mr. Axworthy never acted for any of the parties now seeking to disqualify it. Ordinarily a conflict of interest arises where a lawyer who has represented a client then seeks to act against that client in the same or related matter. This situation often arises as a result of a lawyer transferring to a new law firm. The Code of Professional Conduct suggests, however, that conflict of interest may go beyond this specific situation. Commentary 8, "Acting Against Former Client", of Chapter V, Impartiality and Conflict of Interest Between Clients, provides as follows:

> A lawyer who has acted for a client in a matter should not thereafter act against the client (or against persons who were involved in or associated with the client in that matter) in the same or any related matter, **or take a position where the lawyer might be tempted or appear to be tempted to breach the Rule relating to confidential information.** … (emphasis added)

This commentary suggests that a lawyer can breach the Code of Professional Conduct, relating to conflict of interest, without actually acting against a former client. The emphasized words suggest that a conflict of interest may arise between a lawyer's duty of confidentiality owed to a former client, and duty of loyalty to another client. This commentary refers to appearances. The lawyer may be in a conflict of interest by placing himself in a position where he might appear to be tempted to breach the rule relating to confidential information.

Commentary 1 of Chapter V is instructive in this regard. It states:

> A conflicting interest is one that would be likely to affect adversely the lawyer's judgement or advice on behalf of, or loyalty to a client or prospective client.

Mr. Dufour contends that inasmuch as the applicant is unable to say what confidential information, if any, reposes with Mr. Axworthy, it cannot be said there is any potential for conflict of interest. He concedes that if Mr. Axworthy had such information he could not divulge it as a former Minister. In the absence of any information as to what he knows, I am obliged to assess what is known. That is, what appears publicly about his activities as Minister and Attorney General.

"Confidential information" has been defined a number of cases. I refer to *Ott v. Fleishman*, [1983] 5 W.W.R. 721 (B.C.S.C.) at 723 (last paragraph):

> …for practical purposes any information received by a lawyer in his professional capacity concerning his client's affairs is prima facie confidential unless it is already notorious or was received for the purpose of being used publicly or otherwise disclosed in the conduct of the client's affairs.

Air Atonabee Ltd. v. Canada (Minister of Transport) (1989), 27 C.P.R. (3d) 180 (F.C.T.D.) sets out these principles at p. 202:

> …the following [is considered] as an elaboration of the formulation by Jerome A.C.J., in [*Montana Indian Band v. Canada (Minister of Indian & Northern Affairs)* (1988), 26 C.P.R. (3d) 68 (Fed. T.D.)], that whether information is confidential [within the meaning of the term "confidential information" in the *Access to Information Act*, R.S.C. 1985, c. A-1, s. 20 (1)(b)] will depend upon its content, its purpose and the circumstances in which it is compiled and communicated, namely:
>
> (a) that the content of the record be such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting on his own.
>
> (b) that the information originate and be communicated in a reasonable expectation of confidence that it will not be disclosed, and

> (c) that the information be communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

It is defined, of course, in the Code of Professional Conduct.

The respondent argues that in any event Mr. Axworthy is not in possession of any confidential information. The assertion is based on a very narrow interpretation of "confidential information". Counsel suggests that only information emanating from the applicant (ordinarily a former client) should be treated as confidential for the purpose of disqualifying a lawyer. At para. 22 of the respondent's brief, counsel suggests that at the very least:

> ...the Applicant would have to show that confidential information was imparted by it to Mr. Axworthy in the context of a previous relationship that is akin to a solicitor/client relationship. ...

The position taken by Robertson Stromberg is untenable for a number of reasons. First of all, it should be noted that Mr. Axworthy, in his brief affidavit, does not state that he has no confidential information with respect to matters within the terms of reference of the public inquiry. Rather, he deposes that he has sworn an oath to keep confidential any information which he received in the course of his public duties. He goes on to depose that he has not disclosed to FSIN or Robertson Stromberg or anyone else:

> ...the details of any information that I have received in my capacity of Minister of Justice either in respect to the subject matter of this inquiry or otherwise.

Mr. Axworthy, clearly recognizes that he is under a duty of confidentiality to his former client.

I observe also that a disqualifying conflict of interest can arise without proof of actual misuse or possession of confidential information. The issue was dealt with in *Martin*. The court noted, as did the applicant in this application, that it would be very difficult to know what confidential information is possessed by another lawyer.

Mr. Justice Sopinka noted that in cases where disqualification of a lawyer is sought with respect to the confidential information there are two questions to be answered: (1) Did the lawyer receive confidential information attributable to solicitor/client relationship relevant to the matter at hand? (2) Is there a risk that it would be used to prejudice the client? With respect to the first question Mr. Justice Sopinka stated at p. 1260:

> ...In my opinion, once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. This will be a difficult burden to discharge. Not only must the court's degree of satisfaction be such that it would withstand the scrutiny of the reasonably informed member of the public that no such information passed, but the burden must be discharged without revealing the specifics of the privileged communication. ...

On this issue, Mr. Justice Sopinka adopted a test of a rebuttable presumption of receipt of confidential information.

The only evidence offered by Robertson Stromberg to rebut this presumption is the statement in Axworthy's affidavit that he has not divulged the details of any information.

It should be noted, that in propounding these two questions, Mr. Justice Sopinka was dealing with an application by a former client to disqualify a lawyer based on conflict of interest. *Martin* did not deal with the issue as to whether a disqualifying conflict of interest could arise where the former client was not objecting, and the application was not brought by a current client. However, the presumption of possession and misuse of confidential information arising from the establishment of a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, applies to this situation.

The applicant countered that Mr. Axworthy, as Minister of Justice and Attorney General was **the** Lawyer to the Government of Saskatchewan. If support for this proposition is required, it can be found in *The Department of Justice Act*, S.S. 1983, c. D-18.2. Section 9 sets out the powers and duties of the Minister of Justice. These duties include advising the Crown:

> (d) …upon all matters of law referred to him by the Crown;
>
> (e) advise the heads of the several departments of the government upon all matters of law connected with those departments.

The act also sets out the powers and duties of the Attorney General. Section 10 provides that the Attorney General is the official legal advisor of the Lieutenant Governor.

It seems clear that Mr. Axworthy was in a solicitor/client relationship with the Government of Saskatchewan. As a lawyer, advising on matters of law, it seems clear that he is bound by the Code of Professional Conduct.

In any event, a lawyer in public office must avoid conflicts of interest and the appearance of conflicts of interest even if there is no solicitor/client relationship. Chapter X of the Code of Professional Conduct deals specifically with a lawyer in public office. The rule provides as follows:

> The lawyer who holds public office should, in the discharge of official duties, adhere to standards of conduct as high as those that these rules require of a lawyer engaged in the practice of law.

Commentary 6 states:

> The lawyer should not represent in the same or any related matter any persons or interests that the lawyer has been concerned with in an official capacity. …

I appreciate that this chapter applies to a lawyer while in public office.

The disqualification under this rule does not appear to be predicated on any prior solicitor/client relationship. The test is two-fold: (1) was the lawyer concerned in an official capacity with the person or interest which he now seeks to represent; and (2) is it the same or a related matter? The applicant's material establishes that Mr. Axworthy, in his capacity as Minister of Justice, dealt with FSIN with respect to the establishment of a public inquiry into the matters relating to the terms of reference.

Even more instructive is Chapter XIX, Avoiding Questionable Conduct. The rule states as follows:

> The lawyer should observe the rules of professional conduct set out in the Code in the spirit as well as in the letter.

Commentary 3 provides as follows:

> After leaving public employment, the lawyer should not accept employment in connection with any matter in which the lawyer had substantial responsibility or confidential information prior to leaving, because to do so would give the appearance of impropriety even if none existed. …

This rule appears to be directly on point. Mr. Axworthy, as Minister of Justice, had substantial responsibility with respect to the matter before the Commission of Public Inquiry. His retainer with the FSIN is in connection with the same matter. It can be argued that Mr. Axworthy was not "employed" by the Department of Justice. Strictly speaking Mr. Axworthy was a public officer rather than a public employee. I conclude that a public officer would be held to an even higher standard. The Supreme Court in *Martin* commented that courts are not bound to apply a code of ethics. However, Mr. Justice Sopinka stated at p. 1246:

> Nonetheless, an expression of a professional standard in a code of ethics relating to a matter before the court should be considered an important statement of public policy. …

The Department of Justice has not objected to Mr. Axworthy's involvement. Does that mitigate against the position of the applicant? In *Booth v. Huxter, supra*, the court there considered the issue of waiver of conflict of interest. It concluded there had been no express waiver notwithstanding the fact that several parties were seeking joint representation. However, the court did make the following statement at p. 538:

> In this regard, dealing only for the moment with the private interests of the clients, I might well have come to a different conclusion had mutual waivers been executed, particularly in view of the nature of the interests of each; the nature of the proceedings; the general right of the parties to counsel of their choice and the fact that the motion to disqualify emanated from third parties.

The court went on to suggest that this waiver was restricted to the private interest of the parties. The court suggested that public interest could not be waived. In doing so it quoted the following statement from *Goldberg v. Goldberg* (1982), 141 D.L.R. (3d) 133 (Ont.Div.Ct.): "Furthermore, when the public interest is involved, the appearance of impropriety overrides any private interest claimed by waiver." (at p. 538-39)

The absence of any express waiver of any duty of confidentiality owed by Mr. Axworthy to the Government of Saskatchewan is not determinative. The disqualifying factor relates to the appearance of impropriety and the maintenance of public confidence as *Shand* suggests. The interest cannot be waived.

Mr. Axworthy, in acting for FSIN with respect to the subject matter of the public inquiry, put himself in a position where his duty of confidentiality to his former client, the Government of Saskatchewan, creates a conflict with his duty of loyalty to FSIN.

The next issue is that if Mr. Axworthy is disqualified, does that necessarily disqualify Mr. Ottenbreit and his firm? This is the issue which divided the Supreme Court in *Martin*. Mr. Justice Sopinka, speaking for the majority held that the firm is not automatically disqualified. He held that the concept of imputed knowledge – knowledge of one member of the firm being knowledge of all was "overkill". In this regard he stated as follows at p. 1262:

> Moreover, I am not convinced that a reasonable member of the public would necessarily conclude that confidences are likely to be disclosed in every case despite institutional efforts to prevent it. There is, however, a strong inference that lawyers who work together share confidences. In answering this question, the court should therefore draw the inference, unless satisfied on the basis of clear and convincing evidence, that all reasonable measures have been taken to ensure that no disclosure will occur by the "tainted" lawyer to the member or members of the firm who are engaged against the former client. ...

He went on to outline institutional measures which might rebut the inference, such as Chinese Walls and cones of silence.

Chapter VA of the Code of Professional Conduct was adopted after, and apparently in response to, the Supreme Court decision in *Martin*. It deals with reasonable measures to ensure nondisclosure of confidential information. However, there is no evidence on this application that any measures were put in place by Robertson Stromberg. The only "evidence" in this regard is Mr. Axworthy's statement in his affidavit that he has not:

> divulged either to the Federation of Saskatchewan Indian Nations, any lawyers or staff of Robertson Stromberg or anyone else the details of any information that I have received in my capacity of Minister of Justice either in respect to subject matter of this inquiry or otherwise.

As noted by the applicant, this statement provides little comfort particularly in light of the narrow interpretation that counsel of Robertson Stromberg has placed on the term "confidential information".

The following statement by Mr. Justice Sopinka in *Martin* is also directly on point, at p. 1263:

> A *fortiori* undertakings and conclusary statements in affidavits without more are not acceptable. These can be expected in every case of this kind that comes before the court. It is no more than the lawyer saying "trust me". This puts the court in the invidious position of deciding which lawyers are to be trusted and which are not. Furthermore, even if the courts found this acceptable, the public is not likely to be satisfied without some additional guarantees that confidential information will under no circumstances be used. In this regard I am in agreement with the statement of Posner J. in *Analytica, supra*, to which I have referred above, that affidavits of lawyers difficult to verify objectively will fail to assure the public.

Conclusion

The evidence as to Mr. Axworthy's activities as Minister of Justice and Attorney General and his suggested role in this inquiry is not in issue. It raises the strongest possible inference that a conflict of interest exists. I am also satisfied that a reasonably informed member of the public viewing the circumstances outlined in this application would reach the same conclusion.

Furthermore, the involvement of Mr. Axworthy or his firm in this inquiry does, at a very minimum, give rise to the appearance of impropriety, and, if allowed to continue, could adversely impact on the public's confidence in the process.

Disposition

Robertson Stromberg and its members are disqualified from acting for the Federation of Saskatchewan Indian Nations in the inquiry.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 2nd day of July, 2003.

Mr. Justice David H. Wright
Commissioner

Ruling on Polygraph Evidence

Introduction

I have been asked to decide two preliminary questions:

(a) Should the results of a polygraph test be admitted as evidence before the Inquiry?

(b) Should the refusal to take a polygraph test be admitted as evidence before the Inquiry?

The Facts

A commission of inquiry was created by order-in-council dated February 21, 2003 to inquire into the circumstances that resulted in the death of Neil Stonechild and the conduct of the investigation into his death that followed for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan. I was appointed as commissioner for the inquiry. I appointed Joel Hesje as Commission counsel.

Following his appointment Commission counsel began gathering evidence of the events leading up to the Stonechild death and the investigation that followed. In the course of doing so Commission counsel identified two issues which he recommended, wisely, be dealt with as preliminary matters in order that the participants would know what course I would follow.

Counsel filed briefs which addressed, very helpfully, the issue surrounding the use of polygraph evidence. I also had the assistance of Commission counsel.

Commission Rules of Procedure and Practice

The rules of procedure and practice contain the following provisions:

> III. EVIDENCE
>
> (i) General
>
> 2. The Commission is entitled to receive any relevant evidence that might otherwise be inadmissible in a court of law. The strict rules of evidence will not apply to determine the admissibility of evidence.
>
> 4. Commission counsel have a discretion to refuse to call or present evidence.

I have substantial latitude in deciding what should properly come before the Commission. The need for flexibility and discretion has been the subject of judicial comment on a number of occasions.

The following quotations from the decision of the Ontario Court of Appeal in *Re The Children's Aid Society of the County of York*, [1934] O.W.N. 418, will illustrate. Mr. Justice Mulock states at p. 419:

> …in answering the questions submitted it might be advisable to point out the nature of the inquiry in question. It is one to bring to light evidence or information touching matters referred to the Commissioner. …The Commissioner **should avail himself of all reasonable sources of information, giving a wide scope to the**

> **inquiry**. If, for example, some person were to inform the Commissioner where useful documents or other evidence could be obtained, it would seem reasonable that he avail himself of such a source of information. …It is for the Commissioner, from all available sources, to bring to light such evidence as may have a bearing on the matters referred to him. … (emphasis added)

Mr. Justice Riddell at p. 420:

> …A Royal Commission is not for the purpose of trying a case or a charge against any one, any person or any institution–but for the purpose of informing the people concerning the facts of the matter to be inquired into. Information should be sought in every quarter available. …
>
> Everyone able to bring relevant facts before the Commission should be encouraged, should be urged, to do so.
>
> **Nor are the strict rules of evidence to be enforced; much that could not be admitted on a trial in Court may be of the utmost assistance to the Commission.** … (emphasis added)

Mr. Justice Middleton at p. 421:

> …**It is an inquiry not governed by the same rules as are applicable to the trial of an accused person.** The public, for whose service this Society was formed, is entitled to full knowledge of what has been done by it and by those who are its agents and officers and manage its affairs. What has been done in the exercise of its power and in discharge of its duties is that which the Commissioner is to find out; so that any abuse, if abuse exist, may be remedied and misconduct, if misconduct exist, may be put an end to and be punished, not by the Commissioner, but by appropriate proceedings against any offending individual.
>
> **This is a matter in which the fullest inquiry should be permitted.** All documents should be produced, and all witnesses should be heard, and the fullest right to cross-examine should be permitted. Only in this way can the truth be disclosed. … (emphasis added)

The decision of the same court in *Re Bortolotti and Ministry of Housing et al.* (1977), 76 D.L.R. (3d) 408 (Ont. C.A.), confirms these observations. I refer in particular to the decision of Mr. Justice Howland at pp. 415-417:

> The Commission of Inquiry is charged with the duty to consider, recommend and report. It has a very different function to perform from that of a Court of law, or an administrative tribunal, or an arbitrator, all of which deal with rights between parties. *Re Ontario Crime Com'n*, [1963] 1 O.R. 391. …It is quite clear that a commission appointed under the *Public Inquiries Act, 1971* is not bound by the rules of evidence as applied traditionally in the Courts, with the exception of the exclusionary rule as to privilege (s. 11): *Re Royal Com'n into Metropolitan Toronto Police Practices and Ashton* [(1975), 10 O.R. (2d) 113] at p. 124 …; *Re Children's Aid Society of County of York*, [1934] O.W.N. 418 at p. 420. …

> The approach of the Commission should not be a technical or unduly legalistic one. A full and fair inquiry in the public interest is what is sought in order to elicit all relevant information pertaining to the subject-matter of the inquiry. ...
>
> The foregoing test of relevancy means that the gates will be opened quite wide in the admission of evidence. All the evidence admitted will not, of course, be of equal probative value. It will be the task of the Commission to determine the weight which should be given the oral or documentary evidence presented to it, when making its recommendation and report.
>
> **If evidence is reasonably relevant to the subject-matter of the inquiry, the Commission is not entitled to reject it as offending one of the exclusionary rules of evidence as applied in the Courts**, other than the rule as to privilege which is made expressly applicable by s. 11 of the *Public Inquiries Act, 1971*. If this were not so, it would be possible, as Morden, J., pointed out in *Re Royal Com'n into Metropolitan Toronto Police Practices and Ashton, supra*, p. 121, ...for the Commission to "define its own terms of reference under the guise of evidential rulings on admissibility" and consequently to govern its jurisdiction. ... (emphasis added)

I agree fully with the philosophy expressed in this language.

It is clear the Commission has very wide powers in receiving and considering the evidence to be presented during this inquiry.

Evidence of Polygraph Tests

It is trite to say that polygraph evidence and its use have been the subject of widespread and ongoing debate, some of it heated and partisan.

Counsel refer to a number of decisions and commentaries on the subject. I have reviewed them and identified those that appear most representative of current Canadian jurisprudence.

The first significant decision is *R. v. Phillion*, [1978] 1 S.C.R. 18, (1977), 33 C.C.C. (2d) 535 (cited to C.C.C.). In that case the accused, charged with murder, had submitted to a polygraph test. The accused declined to testify but sought to call the polygraphist to attest as to his veracity at the time of the test. The trial judge refused to allow the evidence. The accused appealed to the Ontario Court of Appeal. The accused's appeal to the Ontario Court of Appeal was dismissed as was his appeal to the Supreme Court of Canada. The court's opinion is summarized in the headnote at p. 536:

> The evidence of a polygraph operator consisting of answers given by an accused to certain questions and his opinion that such answers are true is hearsay and inadmissible as self-serving evidence; the mere fact that the answers are given in the presence of a polygraph machine or that the operator has a certain expertise in the use of the machine does not render the evidence admissible. The admission of such evidence would mean that any accused person who had made a confession could elect not to deny its truth under oath, but rather to rely instead on the results provided by a mechanical device in the hands of a skilled operator relying

> exclusively on its efficacy as a test of truthfulness. It is contrary to the basic rules of evidence to permit such a course. Moreover, there exists no exception to the hearsay rule based on the trustworthiness of the polygraph which would allow the admission of this type of evidence.

The court expanded on these comments in what may be described as the principal decision on the question: *R. v. Beland and Phillips*, [1987] 2 S.C.R. 398. Two accused were charged with conspiracy to commit murder. At trial both accused stated they were willing to undergo a polygraph test, and at the completion of evidence defense applied to have their case reopened so that the accused could undergo polygraph tests and submit the results in evidence. The motion was denied and both the accused were convicted. On appeal, the Court of Appeal overturned the trial judge by holding that in light of all the circumstances the polygraph evidence was admissible. The Crown appealed this verdict to the Supreme Court of Canada. The only issue before the Supreme Court was the admissibility in evidence in a criminal trial of the results of a polygraph examination of an accused. The court reversed the ruling of the Court of Appeal.

Mr. Justice McIntyre, speaking for the majority, set down two principles:

- (i) the admission of polygraph evidence would run counter to the well established rules of evidence;
- (ii) the admission of polygraph evidence will serve no purpose which is not already served, and, further, if allowed would disrupt proceedings, cause delays, and lead to numerous complications.

He then proceeded to discuss each in detail.

(i) The admission of polygraph evidence would run counter to the well established rules of evidence

- (1) the rule against oath-helping;
- (2) the rule against past consistent statements;
- (3) the rule relating to character evidence; and
- (4) the expert evidence rule.

(1) The rule against oath-helping

This rule is intended to prohibit a party from presenting in chief evidence that has, as its sole purpose, the bolstering of the credibility of that party's own witness. Such evidence offends this rule because the only purpose it would serve would be to add support to the accused's testimony. In effect, the polygraph operator would be telling the court that the accused was not lying.

(2) The rule against past consistent statements

This rule encompasses two separate types of evidence:

- (i) The rule which precludes an accused from eliciting from witness self-serving statements which he has previously made.

(ii) A witness, whether a party or not, may not repeat his own previous statements concerning the matter before the court, made to other persons out of court, and may not call other persons to testify to those statements.

The purpose of the rule is to prevent the courts from being diverted from the real issues in the case. An example is the presentation of evidence that witnesses said that the accused made statements to them that were similar to the ones the accused made in court. Repetition of the accused's statements by another witness adds nothing to the weight and reliability of the accused's testimony. Thus, the testimony of a polygraph operator would, in effect, be merely corroboration of the accused's testimony, and, thus, offend the rule against past consistent statements. Mr. Justice McIntyre applied the above reasoning for the exclusion of past consistent statements to polygraph evidence in the following statement:

> …Polygraph evidence when tendered would be entirely self-serving and would shed no light on the real issues before the court. Assuming, as in the case at bar, that the evidence sought to be adduced would not fall within any of the well-recognized expectations to the operation of the rule – where it is permitted to rebut the allegation of a recent fabrication or to show physical, mental or emotional condition – it should be rejected. To do otherwise is to open the trial process to the time-consuming and confusing consideration of collateral issues and to deflect the focus of the proceedings from their fundamental issue of guilt or innocence. … (para. 69)

(3) The rule relating to character evidence

The rule relating to character evidence holds that an accused may adduce evidence of his general reputation, but he cannot relate specific acts which might tend to establish his character. The court held that the testimony of a polygraph operator would offend this rule because, in effect, his testimony would be that on a specific event the accused did not lie. This might lead the trier of fact to the inference that the accused is of sound moral character. Mr. Justice McIntyre applied the rule relating to character evidence to the testimony of a polygraph operator when he wrote:

> …Where such evidence is sought to be introduced, it is the operator who would be called as the witness, and it is clear, of course, that the purpose of his evidence would be to bolster the credibility of the accused and, in effect, to show him to be of good character by inviting the inference that he did not lie during the test. In other words, it is evidence not of general reputation but of a specific incident, and its admission would be precluded under the rule. It would follow, then, that the introduction of evidence of the polygraph test would violate the character evidence rule. (para. 72)

(4) The expert evidence rule

The expert evidence rule holds that the testimony of an expert is only admissible if it will aid the court in understanding something that is outside the experience or understanding of the court. Thus, if on the proven facts of the case the court can form its own opinion, then the testimony of experts is inadmissible due to the fact that it is unnecessary. In applying this rule to polygraph evidence, Mr. Justice McIntyre held that such evidence would relate only to the issue of the accused's credibility and this issue is well within the domain and understanding of the court. In excluding polygraph evidence under the expert evidence rule he stated the following, "Here, the sole issue upon which the polygraph evidence is adduced is the credibility of the accused, an issue well within the experience of judges and juries and one in which no expert evidence is required. It is a basic tenet of our legal system that judges and juries are capable of assessing credibility and reliability of evidence." (para. 75)

(ii) The admission of polygraph evidence will serve no purpose which is not already served, and, further, if allowed would disrupt proceedings, cause delays, and lead to numerous complications.

The same judge once again pointed out that issues of credibility are well within the ambit of the courts. Further, he added the concern that if admitted such evidence could receive undue emphasis due to the mystique of science surrounding it. Finally, he stated that the admission of such evidence would raise many difficult evidential issues. He articulated some of the evidential problems that would arise as follows:

> ...What would the result be, one may ask, if the polygraph operator concluded from his test that witness "A" was lying? Would such evidence be admissible, could it be excluded by witness "A", could it be introduced by the Crown? These are serious questions, and they lead to others. Would it be open to the opponent of the person relying upon the polygraph to have a second polygraph examination taken for **his** purposes? If the results differed, which would prevail, and what right would there be for compelling the production of polygraph evidence in the possession of a reluctant party? It is this fear of turmoil in the courts which leads me to reject the polygraph. ... (para. 78) (emphasis in original text)

I found the comments of Ian Freckelton and Hugh Selby in the recent text, *Expert Evidence: Law, Practice, Procedure and Advocacy*, 2d ed. (Lawbook Co., 2002), quite helpful. The authors note at p. 200 that polygraphy was developed late in the 19th century by the Italian criminologist Lombroso who postulated that changes in blood pressure and pulse accompany lying.

They then make the following observations:

> For its effectiveness, it has been suggested that polygraphy depends on implanting into the subject a belief in the infallibility of the machine and on the design of effective control questions. "The whole fragrant stew of imposition, trickery and downright lying (by the examiner, not the subject) is reminiscent of a certain type of hard police interrogation of subjects whom the interrogators 'know' to be guilty": Elliott (1982, pp. 104, 108).
>
> The use of the polygraph is based upon the assumption that a person who is lying will exhibit indicative answers. The risk that was isolated early in the development of the polygraph was that innocent but anxious people could be labelled as a liar and so as guilty: see Raskin (1989, p. 252). The means adopted by researchers to address this risk was the "control question test", designed to settle the person being tested and to enable the operator to gauge when the person is telling the truth and when he or she is lying. Supporters of the polygraph assert laboratory studies reporting accuracy of polygraph examination of between 93 and 97 per cent: see, eg, Raskin (1989). However, as Kapardis (1997, p. 217)

> noted, a number of the apparently supportive studies suggest that at best a polygraph examination risks labelling 20 per cent of suspects as liars who are later found to be innocent. In a disturbing study, Parrick and Iacono (1989) offered prison inmates, half of them psychopaths, $US20 to beat the polygraph. The psychopaths did little better than the non-psychopaths but the significant finding was that, using the control question technique, the polygraph examiners wrongly classified 45 per cent of the innocent subjects as guilty of crimes. In a later experiment, conducted with the polygraph division of the Royal Canadian Mounted Police (Parrick and Iacono (1991)) the experimenters found further evidence to support the contention that the control question technique misidentifies nearly half of innocent suspects as liars. This has led supporters of the polygraph to develop a further technique called the "directed lie test": see Honts and Raskin (1988); see also Raskin (1989). The polygraph's reliability remains controversial with passionate opponents of its reliability (see the discussion in Kapardis (1997, pp. 216-223)) remaining probably in the ascendancy **in relation to its forensic, as against its investigative, use**. (pp. 200-01) (emphasis added)

They then mention the sole decision where such evidence was allowed: *R. v. Wong*, [1977] 1 W.W.R. 1 (B.C.S.C.), and conclude the case was wrongly decided. It has not been followed anywhere in Canada as far as I can determine, nor, with respect, should it. They point out that *R. v. Phillion* and *R. v. Beland* have settled the issue in Canada. They refer (at p. 202) particularly to this statement from *R. v. Beland* as to the use of polygraph evidence, "It will disrupt proceedings, cause delays, and lead to numerous complications which will result in no greater degree of certainty in the process than that which already exists."

The second issue, the decision not to take a polygraph test has also attracted a good deal of judicial comment. I refer to *R. v. Hebert* (1990), 77 C.R. (3d) 145 (S.C.C.). Mr. Justice Sopinka had this to say at p. 157:

> However, it cannot be denied that, apart altogether from the privilege, the right to remain silent – the right not to incriminate oneself with one's words – is an integral element of our accusatorial and adversarial system of criminal justice. As Cory J.A. (as he then was) noted in *R. v. Woolley* (1988), 63 C.R. (3d) 333, 40 C.C.C. (3d) 531 at 539, 37 C.R.R. 126, 25 O.A.C. 390 (C.A.): "The right to remain silent is a well-settled principle that has for generations been part of the basic tenets of our law." (See also *R. v. Hansen* (1988), 46 C.C.C. (3d) 504 (B.C.C.A.).) In a different context, Lamer J. pointed out in *R. v. Collins*, [1987] 1 S.C.R. 265 at 284, 56 C.R. (3d) 193, [1987] 3 W.W.R. 699, 13 B.C.L.R. (2d) 1, 33 C.C.C. (3d) 1, 38 D.L.R. (4th) 508, 28 C.R.R. 122, 74 N.R. 276, that the acquisition of a self-incriminatory admission from an accused following a Charter violation "strikes at one of the fundamental tenets of a fair trial, the right against self-incrimination". I take Lamer J.'s words to mean that the full range of an accused's right to stand mute in the face of an accusation by the state is not exhausted by reference to the privilege against self-incrimination as that privilege has been defined by this court. It follows, it seems to me, that the basic principle underlying the right to remain silent must be a "principle of fundamental justice" within the meaning of s. 7 of the Charter. In other words, the right to remain silent is truly a right.

> I find evidence of the existence of this principle in the courts' historical solicitude for an accused's silence. It is settled law that silence in the face of an accusation by or in the presence of the police cannot serve as evidence against an accused: …

He continued at pp. 158 and 159 as follows:

> In *Stein v. R.*, [1928] S.C.R. 553 at 556, 50 C.C.C. 311, [1929] 1 D.L.R. 143 [Man.], this court held, on the basis of *Christie* [[1914] A.C. 545], that a trial judge had erred in failing to direct the jury that, "in the absence of any assent by the accused either by word or conduct to the correctness of the statements made in his presence, they had **no evidentiary value whatever** as against him and should be **entirely disregarded**". … (emphasis added)
>
> …As the cases referred to earlier indicate, the mere silence of a criminal accused in the presence of a person in authority is not capable in law of supporting an inference of consciousness of guilt. The essence of the *Christie* rule is that, **even if** the circumstances of an accusation cry out for an explanation or denial, the accused's silence, without more, is not evidence against him: there must be "word or conduct, action or demeanour" pointing to an adoption of the statement by the accused. (emphasis in original text)
>
> It is sometimes argued in this connection that an accused's silence in the face of a police accusation is nothing more than a particular example of the liberty we all enjoy to do that which is not prohibited, embodied in the maxim "nulla poena sine lege". Since the law does not positively require a response, silence is allowed: see *R. v. Esposito* (1985), 53 O.R. (2d) 356, 49 C.R. (3d) 193, 24 C.C.C. (3d) 88 at 94, 20 C.R.R. 102, 12 O.A.C. 350 (C.A.), per *Martin* J.A., citing Lamer J. in *Rothman v. R.* [[1981] 1 S.C.R. 640], at p.683. …

The question was also addressed in *R. v. B. (S.C.)* (1997), 119 C.C.C. (3d) 530, by the Ontario Court of Appeal. They had this to say at paras. 41 and 42 of the judgment:

> 41 …Nothing in these reasons should be taken as touching on the admissibility of evidence that an accused or suspect refused to cooperate with the police.
>
> 42 There are policy concerns and fundamental constitutional principles at play where the Crown seeks to tender evidence of a refusal to cooperate which are not engaged when the defence tenders evidence of an accused's cooperation with the police. Our criminal justice system accepts as a basic tenet the proposition that persons cannot be required to supply evidence which may assist in their ultimate conviction: *R. v. Chambers* (1990), 59 C.C.C. (3d) 321 at 340 (S.C.C.). Put differently, people are free to choose whether they will assist the police in their investigation. This fundamental liberty becomes a constitutional right when a person is detained or arrested: *R. v. Hebert* (1990), 57 C.C.C. (3d) 1 (S.C.C.). The freedom to choose whether to assist the state in the investigation of an alleged crime would be illusory if the failure to render assistance could, standing alone, be used as evidence against a person at trial. Similarly, the right to maintain the integrity of one's body against unauthorized state intrusion would lose its force if the exercise of that right could take on an incriminatory connotation at trial.

Counsel points out that the evidence of a polygraph refusal is totally unnecessary in this inquiry inasmuch as the person who refused the request will be required to testify and will be subject to cross-examination. His credibility will be assessed on the basis of his *viva voce* testimony.

Analysis

In my respectful view the issues raised in these applications can be resolved fairly easily.

The principles set down in *R. v. Beland and Phillips* have general application to the evidence of experts. They are not confined to criminal cases. While it is clear that exclusionary rules of evidence do not apply in the context of commissions of inquiry, a tribunal should be no less vigilant to ensure that notwithstanding the very wide powers it has to receive and consider evidence only evidence that is reasonably relevant and material to the subject matter of the inquiry should be allowed.

Evidence as to the results of a polygraph test is not reasonably relevant to the issue of credibility of a witness, particularly where the examinee testifies at the inquiry. It chiefly offends the rule as to expert evidence. As the Supreme Court of Canada pointed out the credibility of the examinee is an issue well within the experience of the trier of the facts. Indeed the essential function of the Commission is to hear the facts and reach conclusions on those facts. To allow a polygraph operator to usurp that function flies in the face of the long and well established jurisprudence in this country. I refer also to the decision in *R. v. Marquard*, [1993] 4 S.C.R. 223 and the comments at p. 248:

> ...Credibility must always be the product of the judge or jury's view of the diverse ingredients it has perceived at trial, combined with experience, logic and an intuitive sense of the matter: see *R. v. B.* (G.) (1988), 65 Sask. R. 134 (C.A.), at p. 149, *per* Wakeling J.A., affirmed [1990] 2 S.C.R. 3. Credibility is a matter within the competence of lay people. Ordinary people draw conclusions about whether someone is lying or telling the truth on a daily basis. The expert who testifies on credibility is not sworn to the heavy duty of a judge or juror. Moreover, the expert's opinion may be founded on factors which are not in the evidence upon which the judge and juror are duty-bound to render a true verdict. ...

Similarly, evidence of a refusal to submit to a polygraph test is not reasonably relevant as no proper inference can be drawn from the exercise of the right to remain silent in the course of a criminal investigation. Again, this is particularly so where such person does testify at the inquiry.

I am mindful always of the need to have any evidence material and reasonably relevant to this Inquiry brought before me. I am not entitled however, to accept evidence that offends the principles set out in the above decisions. In the final analysis I must determine the credibility of the witnesses. The two questions posed at the commencement of my ruling must be answered in the negative.

I have considered the use of polygraph evidence in relation to the first branch of the Commission's terms of reference: the inquiry into the circumstances that resulted in the death of Neil Stonechild. The second branch of the terms of reference relate to the conduct of the investigation into the death of Neil Stonechild. Polygraph testing is a widely used investigative tool. Evidence of polygraph testing may be reasonably relevant to the extent it touches on the conduct of the investigation. This ruling should not be taken as a determination of that issue.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 4th day of September, 2003.

Mr. Justice David H. Wright
Commissioner

Application of Keith Douglas Jarvis

The applicant will appear as a witness at the Inquiry. He now applies for full standing and funding.

Ruling on Standing

The Terms of Reference provide that the Commission has the responsibility to inquire into all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild. The evidence to date has focused on the first branch of the Terms of Reference. The focus will now shift to the conduct of the investigation of the death of Neil Stonechild.

In 1990 Keith Jarvis was a Sergeant in the Saskatoon Police Force. He was charged with the investigation of the death of Neil Stonechild, the first formal investigation to follow the discovery of Mr. Stonechild's body on November 29, 1990. Mr. Jarvis's conduct of the investigation will be central to this branch of the Inquiry. As such, he is directly and substantially affected by the Inquiry. The findings of the Commission may have important implications for him. I have concluded he should be granted full standing at the Inquiry.

Ruling on Funding

Mr. Jarvis has retained counsel. He applies for funding for his legal representation. He is retired and has limited financial resources. He meets the criteria set by the Commission for funding as a party. I refer to the Terms of Reference and in particular, paragraph 5:

> 5. The Commission shall, as an aspect of its duties, determine applications by those parties, if any, or those witnesses, if any, to the public inquiry that apply to the Commission to have their legal counsel paid for by the Commission, and further, determine at what rate such Counsel shall be paid for their services.

Mr. Jarvis is entitled to funding with respect to his legal representation as a party. Counsel's compensation will apply on the basis of one hour's preparation for each hour of attendance at the Inquiry. Time spent by his counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by the Commission counsel may also be billed as preparation time.

I have reviewed Mr. Stevenson's material and his curriculum vitae. Given counsel's substantial experience and length of time at the Bar, it is appropriate to set his hourly rate at $192.00. If alternate counsel appears for Mr. Stevenson that person's hourly rate will be fixed at $125.00.

Counsel will submit an invoice to Commission counsel on a monthly basis, the invoice to set out the nature of the work done and disbursements.

Conclusion

I appreciate that not every eventuality can be anticipated. Circumstances may require that the bases for funding be re-visited at a later date. Counsel will have leave to apply for directions as they may be advised. Any such application shall be in writing and the other parties shall be served with copies of it.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 26th day of September 2003.

Mr. Justice David H. Wright
Commissioner

Ruling on Applications on Behalf of the Saskatoon Police Association

The Saskatoon Police Association have served two notices of application. The applications were heard on October 6, 2003. The first application sought three orders.

Firstly, an order is sought directing Commission Counsel to answer inquiries concerning an interview made by Mr. Robert Martell of Mr. Keith Jarvis. It is my understanding that this information has been provided, and an order is no longer necessary.

Secondly, an order is sought that the original of a tape recording of the Martell/Jarvis interview be made available for a review by an independent laboratory. This request was not pursued.

Thirdly, an order is sought authorizing release to Mr. Bernie Eiswirth of certain Documents. In light of the fact that Mr. Stevenson, Counsel for Keith Jarvis, joined in the application, and Commission Counsel is not objecting to the order sought, I authorize disclosure of the following information to Mr. Bernie Eiswirth by Counsel for the Saskatoon Police Association, subject to Mr. Eiswirth providing the required Undertaking:

a) Investigative Summary prepared by RCMP;

b) Saskatoon Police service reports relating to the death of Neil Stonechild;

c) All interviews of Keith Jarvis;

d) All reports prepared by Keith Jarvis with respect to the death of Neil Stonechild, the tape recording of the Martell/Jarvis interview; and the transcript of that tape recording.

In a second notice of application the Saskatoon Police Association seeks two further orders. Firstly, an order is sought allowing Counsel on behalf of the Saskatoon Police Association to make full disclosure of documents and information in the within matter to all members, past and present, of the Association presently listed as witness as who may appear to be possible witnesses in the within matter to such extent that Counsel feels appropriate.

The Rules of Practice and Procedure (Access to evidence) sets out clearly to whom documents and information can be disclosed and on what basis. Paragraph three provides as follows:

> 3. Counsel to parties and witnesses will be provided with documents and information, including statements of anticipated evidence, only upon giving an undertaking that all such documents or information will be used solely for the purpose of the Inquiry and, where the Commission considers it appropriate, that its disclosure will be further restricted. The Commission may require that documents provided, and all copies made, be returned to the Commission if not tendered in evidence. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect. These undertakings will be of no force regarding any document or information once it has become part of the public record. The Commissioner may, upon application, release any party in whole or in part

from the provisions of the undertaking in respect of any particular document or other information, or authorize the disclosure of documents or information to any other person.

These rules were circulated to all Counsel who were invited to comment or suggest revisions. None did with respect to the requirements for disclosure. No one questioned the requirements with respect to disclosure to non-clients.

Mr. Plaxton acknowledges that he does not represent individuals members past or present. He represents the Police Association. Accordingly, he is subject to the requirement that he obtain authorization from me to make disclosure to any past or present member of the Association.

I instructed Commission Counsel as to how such applications for authorization would be dealt with. Commission Counsel sent a letter to Counsel dated July 25th, 2003 indicating that applications for authorizations to disclose to non-clients could be made through a letter setting out the name of the person, the documents sought to be disclosed, and the purpose for such disclosure. My ruling as to such applications was also done informally by letter from Commission Counsel. Several applications were dealt with in this manner.

Mr. Plaxton indicates that a small number of persons may be affected by the requirements for authorization, which includes some persons on the witness list.

I can see no prejudice or significant hardship on the Association in complying with the requirements. I am not prepared to grant the blanket authorization sought in this application.

Secondly an order is sought authorizing disclosure to Counsel for Mr. Jarvis. An order in this regard is unnecessary in light of the fact that Mr. Jarvis has been granted Standing and full disclosure has been made to his Counsel in accordance with the Rules of Practice and Procedure.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 7th day of October, 2003.

Commissioner David H. Wright

Various Applications for Additional Funding

The Saskatoon Police Association makes a second application for funding. Cst. Senger, Cst. Hartwig, Stella Bignell, Federation of Saskatchewan Indian Nations, and Keith Jarvis each apply for additional funding. In my original ruling on standing and funding, dated May 13, 2003 I did acknowledge that the circumstances may require the basis for funding be revisited at a later date. I granted Counsel leave to apply for directions as they may be advised. All Counsel have agreed that these applications may be determined without a hearing.

In general, these applications are made on the grounds that preparation for the hearings has involved more work than was anticipated.

Counsel for FSIN and Stella Bignell make a further point in support of their applications for additional funding. They point to the fact that six of the eight parties that have been granted standing represent police interests. Only two parties, FSIN and Bignell, can be said to represent first nation interests. This is not to suggest that the hearings to date have been adversarial. However, they point to the inequality of resources available to them as compared to the resources available to the parties representing police interests.

Counsel for Keith Jarvis request additional funding to cover the costs associated with reviewing the evidence to date.

I am not satisfied that a compelling argument has been made to revisit my ruling on funding on the grounds that preparation has involved more work than anticipated. In my view, the hearings have proceeded as expected, and without any major issues which should not have been anticipated from the outset. In this regard, I would refer to the Standing and Funding Guidelines established for the Inquiry. The principles applicable to funding are stated as follows:

> "The aim of the funding is to assist parties granted standing in presenting such interests and perspectives but is not for the purpose of indemnifying interveners from all costs incurred."

I do find some merit in the argument that there is some inequality in resources as between the police interests and the first nation's interest. Accordingly, I will allow one additional hour of preparation time for each hour of hearing time to each of the FSIN and Stella Bignell. The additional hour of preparation time will be at the rate established for alternate counsel of $125.00 per hour.

I also agree that Keith Jarvis should have some additional funding to cover costs of reviewing the evidence to date. In light of the fact he only recently obtained standing, his legal counsel was not present for the first three weeks of the hearings. I will allow an additional twenty hours of preparation time to Keith Jarvis.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 8th day of October, 2003

Mr. Justice David H. Wright
Commissioner

Ruling on Jason Roy's Second Application for Standing and Funding

Jason Roy was granted funding for legal counsel to represent him while he gave testimony before the Inquiry. He also applied for standing as a full participant. In written reasons dated June 13th, 2003 I concluded that it was unnecessary and inappropriate to add Mr. Roy as a party to the Inquiry and dismissed the application for full standing. Jason Roy now applies to vary my ruling as to his standing and funding. He does so on the basis that he was extensively cross-examined and that other witnesses may cast doubt on his account of events surrounding the death of Neil Stonechild. That possibility was entirely foreseeable in June.

Mr. Parsons also argues that Mr. Roy's position is "analogous" to Mr. Jarvis. I do not agree. Mr. Jarvis was granted standing because of the possibility that, after hearing all of the evidence, I may make findings which impact negatively on his role in the investigation. Procedural fairness dictates that a person in such position be allowed to fully prepare for and respond to any possible adverse findings. Mr. Roy is not in the same position. The fact that his account of Mr. Stonechild's activities may be contradicted goes to the question of credibility. There are many other witnesses subject to the same scrutiny and whose evidence may not ultimately be accepted. To grant witnesses full standing on this basis would render the Inquiry unworkable.

This point has been raised by The Federal Court of Appeal in *Morneault v Canada* [2001] 1 F.C. 30. In that case it was argued that the Commission of Inquiry was required to give prior notice of a potential adverse finding as to the credibility of a witness. The Federal Court of Appeal concluded that the requirement of prior notice in such case "could well impose on a Commission of Inquiry an unduly onerous standard of procedural fairness."

Mr. Parson's requested that I stay the Inquiry. What he means by this I assume is that I adjourn the Inquiry. I understand that his client has a particular concern about the evidence of Mr. Jarvis. Commission Counsel has offered to delay calling Mr. Jarvis to the week commencing October 20th, 2003 in order that the other witnesses can be heard and work of the Inquiry can continue. Mr. Parsons stated he is still unwilling to proceed. I adjourned the Inquiry until 2:00 p.m. today in order that I could reduce my rulings to writing and advise Counsel before we resume. I am instructing Commission Counsel to circulate this ruling prior to the resumption of the hearings. Mr. Parsons, is of course free to take such steps as he may think appropriate.

For the reasons outlined above I can see no basis for revising my original ruling as to Mr. Roy's request for standing and funding, nor to adjourn the Inquiry. I must add that I do not understand why the application was not made months ago. I did not receive a satisfactory explanation for this from Mr. Parsons.

The application for disclosure is essentially an element of the application for standing and funding and similarly fails. However, Commission Counsel will disclose to Mr. Roy's legal counsel, summaries of anticipated evidence with respect to future witnesses who may impact directly on Mr. Roy's account of events.

I have no indication as to what future evidence may be called. Commission Counsel has the initial obligation to interview witnesses and determine if they should be called. If a witness is identified who directly attacks Mr. Roy's testimony, Mr. Roy's counsel will be informed in advance if that person is to testify in order that he can attend the hearing. My previous ruling provides for funding for legal counsel for Mr. Roy for time spent at the request of Commission Counsel.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 8th day of October, 2003

Commissioner David H. Wright

Application for Standing and Funding by Gary Pratt

The applicant will appear as a witness at the Inquiry. He now applies for full standing and funding.

Ruling on Standing

I grant full standing to Mr. Pratt. I do so in recognition of the allegations against Mr. Pratt, which have been referred to repeatedly in the hearings. There is also some indication that he has been considered a suspect in the investigation of Mr. Stonechild's death. As such he is directly and substantially affected by the Inquiry.

In granting full standing to Mr. Pratt, I would note that there is no requirement that his counsel attend all of the hearings. It is up to his counsel to determine when his attendance is required at the hearing in order to properly represent Mr. Pratt's interest.

Ruling on Funding

Mr. Pratt has retained counsel. His Counsel should have the opportunity to participate fully in the balance of the Inquiry. Mr. Pratt has limited financial resources and meets the criteria set by the Commission for funding as a party. Counsel's compensation will apply on the basis of one (1) hours preparation for each hour of attendance at the Inquiry. Time spent by his Counsel at the request of the Commission, including Commission Counsel, or in attending with his client while his client is being interviewed by Commission Counsel may also be billed as preparation time. Mr. Pratt's Counsel, Mr. Brayford, has substantial experience, and I set his hourly rate at one hundred and ninety two ($192.00) dollars per hour. If alternate counsel appears for Mr. Brayford that person's hourly rate will be fixed at one hundred and twenty five ($125.00) dollars per hour.

I recognize also Mr. Brayford will have to familiarize himself with evidence called to date and the material which has been disclosed. I will allow an additional forty (40) hours for such familiarization.

Counsel will submit an invoice to the Commission office on a monthly basis, the invoice to set out the nature of the work done and any disbursements. I expect Mr. Brayford to keep a separate record of the time allowed for familiarization with the evidence and materials disclosed from his record of preparation for and attendance at the hearings.

As I have indicated in past rulings, circumstances may require that the basis for funding be revisited at a later date. Counsel shall have leave to apply for directions as he may be advised. Any such application shall be in writing and shall be served on the other parties.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 28th day of November, 2003.

Mr. Justice David H. Wright
Commissioner

Application for Additional Funding

I have received two applications for additional funding. I also wish to deal with funding for closing submissions.

I. Application on Behalf of Stella Bignell

Counsel for Stella Bignell applies for additional compensation for their services as her counsel.

On May 16, 2003 I granted Ms. Bignell full standing at the Stonechild Inquiry and set Mr. Worme's compensation as follows:

> **Stella Bignell.** I expect Ms. Bignell will be a witness at the Inquiry and certainly I anticipate she will be present throughout the Inquiry. She does not have any resources to retain and instruct counsel. She lives in northern Manitoba and must travel by public transportation for some distance. The fees and disbursements of her counsel, Mr. Worme, will be provided at no cost to her. I fix Mr. Worme's hourly rate at $192.00. Mr. Worme's compensation will apply on the basis of one hour's preparation for each hour of attendance at the Inquiry. Counsel will submit an invoice to Commission counsel on a monthly basis, the invoice to set out the nature of the work done and disbursements.
>
> Time spent by counsel at the request of the Commission including Commission counsel or in attending with his client while the client is being interviewed by Commission counsel may also be billed as preparation time. I am not disposed to allow funding for second counsel for any of the applicants.

On June 25, 2003 I provided for alternate counsel for Ms. Bignell as I had done for other parties.

I subsequently made a further order amending the compensation to be paid to her counsel to allow two hours of preparation time for each hour of attendance at the inquiry. I point out that only one other party, FSIN, was granted this additional compensation.

By December 2003 Mr. Worme's firm had submitted accounts for their fees totalling $117,843.26. This figure included fees the solicitors anticipated they would earn for future preparation and appearances before the Commission. The fees alowed for the January and March hearings of the Commission were calculated as follows:

Hearing Date	Hearing hrs	Prep hrs	Total	Rate of Pay	Total Allowed
05-Jan	6	6	12	192	2,304
		6	6	125	750
06-Jan	6	6	12	192	2,304
		6	6	125	750
07-Jan	6	6	12	192	2,304
		6	6	125	750
08-Jan	6	6	12	192	2,304
		6	6	125	750
09-Jan	6	6	12	192	2,304
		6	6	125	750
08-Mar	6	6	12	192	2,304
		6	6	125	750
09-Mar	6	6	12	192	2,304
		6	6	125	750
10-Mar	6	6	12	192	2,304
		6	6	125	750
11-Mar	6	6	12	192	2,304
		6	6	125	750
12-Mar	6	6	12	192	2,304
		6	6	125	750
15-Mar	6	6	12	192	2,304
		6	6	125	750
16-Mar	6	6	12	192	2,304
		6	6	125	750
17-Mar	6	6	12	192	2,304
		6	6	125	750
18-Mar	6	6	12	192	2,304
		6	6	125	750
19-Mar	6	6	12	192	2,304
		6	6	125	750

The total amount which would be allowed to counsel to the last day of the March hearings was $130,304.00.

Ms. Candace Congram is the Executive Director to the Inquiry. She is responsible for reviewing and authorizing, initially, the claims submitted by various counsel funded by the Commission.

On December 8, 2003 Ms. Congram wrote to Ms. Bignell's counsel as follows:

> This is to advise you of the current status of the funding arrangement granted to Ms. Stella Bignell by the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild.
>
> In his ruling on Standing and Funding, Commissioner David Wright set your hourly rate at $192.00 and an alternate counsel hourly rate of $125.00. Compensation applies on the basis of two hours of preparation time for each one hour of attendance at the Inquiry. The first hour of preparation time is to be billed at

> $192.00 per hour and the second hour of preparation time is to be billed at $125.00 per hour.
>
> The Commission has allowed you a maximum billable amount of $125,214.00, plus disbursements, based on the attached anticipated schedule of hearings. To date, invoices submitted by you to the Commission have totalled $117,843.26 before tax and disbursements. Thus, your remaining allowable billable amount based on the current anticipated schedule is $7,370.74.
>
> Any questions regarding this matter should be directed to Candace Congram, Executive Director of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild.

Ms. Congram pointed out that she had, in effect, authorized the prepayment of Mr. Worme's legal fees in anticipation of his attendance at the hearings in January and March. By pre-billing and obtaining payment counsel had exhausted virtually all of the funds to which they would have been entitled to the end of the March 2004 hearings.

Mr. Worme's partner, Mr. Curtis, wrote to the Commission on February 16, 2004. I refer to that letter:

> We write further to the above noted matter and the correspondence from Ms. Congram recently received.
>
> Kindly take this to be our application to amend or dispense with all together the so called "funding cap". While we find that such cap allows for sufficient preparation time insofar as reviewing the disclosure materials and preparing for examination of witnesses, we find that the time required to attend to the blizzard of correspondence received from other counsel, who are not constrained by any funding cap, and matters relating to the calling of new witnesses and attending to controversial issues, most specifically the polygraph issue exceeds the arrangement allowed under the cap.
>
> We would suggest the cap be dispensed with all together and that any issue that the Commission has with our billing can be addressed through other means. Having said that, we are open to suggestions regarding alternate arrangements.
>
> We trust this matter can be addressed in a prompt fashion.

On March 2, 2004 Commission counsel advised Mr. Curtis, on my instructions, that I was not disposed to grant additional funding in light of the particular circumstances. Counsel was advised, however, that he could make a formal application to me at the Inquiry to the same end. He did so.

The material filed by Mr. Curtis contained these observations:

> As well, we have reviewed the various rulings on funding handed down by Mr. Justice Wright and note that the gist of such decisions is that the funding should be satisfactory and sufficient to provide for any matters that might be anticipated during the course of the inquiry. We would suggest that such a phrase, "might be anticipated" is somewhat deceptive, given obviously that not all things can be anticipated. We would suggest that this was acknowledged at some time during

the course of the hearing in November by Mr. Justice Wright when, in referring to the length the hearing was appearing to run, stated that "my life is not my own any more", which we suggest is confirmation that the hearing is proceeding much longer than anticipated and in fact has taken on a life of its own.

We would suggest the reasons extending the length of the hearing cause a somewhat geometrical extension of the time for preparation for each hour of hearing. Such reasons are, *inter alia*, as follows:

- the blizzard of correspondence and applications, primarily emanating from counsel for the Police Association, who are funded by their client and obviously have no cap in that regard that we are aware of, and which correspondences and applications are invariably concurred in by counsel for the City of Saskatoon, and Constables Hartwig and Senger. It is quite evident all such counsel and their clients have common interests. While we acknowledge that all such counsel and clients are stakeholders in the inquiry, (albeit the granting of standing to the Police Association remains somewhat curious), they are no more so in this regard than the family of Neil Stonechild;
- an inordinate amount of time was devoted to advocacy with respect to the issue of whether or not polygraph evidence was to be admitted at the inquiry. This required a tremendous amount of research some of which had to be contracted out by this office;
- the number of expert witnesses applied for by police lawyers to counter any expert evidence that suggests police involvement in the death of Neil Stonechild. Primary examples of this are Dr. Arnold and Dr. Lew wherein a considerable amount of time has been spent and will be spent yet assessing such witnesses' credentials and conducting background research. This is nothing more or less than a battle of experts with which the courts are all too familiar and which could be an endless process given that there can always be found an expert to contradict that of another;
- the veritable blizzard of disclosure which has certainly expanded markedly since the initial disclosure provided prior to the commencement of the proceedings in September. Noteworthy in this regard is the disclosure provided prior to the hearing dates in January where counsel were compelled to scrutinize interviews with numerous witnesses coming forth with new evidence, primarily setting out evidence adverse to any police involvement with Neil Stonechild's death and primarily from witnesses who had obvious and suspicious self interests at heart in coming forward with their information. Applications were made by the counsel for the Police Association, supported by counsel for Constables Hartwig and Senger and the City of Saskatoon, which applications were denied. Nevertheless, all such witness interviews and applications had to be carefully reviewed and researched by counsel;
- more recently the receipt of considerable disclosure received from your office March 2, 2004, being a "vetted" document bundle relating to what can be viewed as a Saskatoon police shadow investigatory team. Undoubtedly, this

> disconcerting information will trigger further controversy and will require further time of the Commission. Furthermore recent receipts of disclosure compact discs containing voluminous materials will result in our further expenditure of preparatory time;
>
> - the prolonged cross-examination of Jason Roy, which admittedly was not unanticipated. However, the seemingly endless parade of expert witnesses that we now face in relation to Mr. Roy's testimony and any expert evidence that has been called in that regard are requiring an inordinate and unanticipated amount of scrutiny and research;
> - noteworthy as well is the inordinate amount of correspondence surrounding document SI-88. Such document was proposed by the counsel for the Police Association to be put into evidence through a witness other than the maker of such document, a proposal which required considerable resistance, which resistance was well placed given that the maker of such document, Mr. Harker, admitted that the document was in error only when pressed to come to the inquiry to testify with respect to such document and to bring with him supporting documents which would verify his testimony. This is a rather classic example of the adversarial nature of this inquiry and the effort being made by certain counsel to supply the inquiry with any and all evidence which would tend to obfuscate the process and minimize the possibility of police involvement in Neil Stonechild's death, however without substance such evidence might be.
>
> ...
>
> We submit that we have made our best efforts to work within the confines of the funding cap but have found such to be impossible. We could not reasonably have been expected to anticipate the range and depth of evidence and explanations summoned for and provided to this inquiry by counsel for the police.
>
> We submit that it is unreasonable to expect counsel for Stella Bignell to participate in 2, 3 more weeks of this inquiry without funding and, as previously stated, expect our client to subsidize this very public proceeding. While we appreciate that some funding limit is required, and while we are not asking that the cap be removed entirely, we are requesting that it be modified at this very crucial stage of the proceedings in order to provide funding for the balance of the inquiry at the same rate as previously allowed.

The conundrum faced by Messrs. Worme and Curtis does not, with respect, result from the additional work they have had to do. Rather it flows from the fact that they applied for and received payment in advance for their services. In retrospect it would have been better perhaps if Ms. Congram had refused their request. I appreciate, however, that she has some flexibility in dealing with solicitors' accounts.

I am not prepared to amend or abandon the funding guidelines I have established for the hearings. The funding formula was determined at the outset of the Inquiry and adhered to by all counsel.

II. Application on Behalf of Larry Hartwig

Counsel for Larry Hartwig has also applied for additional funding for his representation of Constable Hartwig. This application was made to me in writing and Mr. Fox has indicated that he is satisfied to have his application determined on the written material without the necessity of a hearing. Briefly stated, Mr. Fox's submission is that the funding guidelines have not provided for adequate compensation for time spent on various applications including the standing applications, the application to remove Mr. Axworthy as counsel for FSIN, the application with respect to polygraph evidence, and other various interim applications. As I have indicated, I am not prepared to amend or abandon the funding guidelines I have established for the hearings. Accordingly, I also dismiss this application.

III. Funding for written submissions

I have invited counsel to provide written submissions in advance of hearing closing or oral submissions. In light of the length of the Inquiry and the number of additional issues that emerged as the hearings proceeded, I recognize that the funding formula established for the hearings would not adequately compensate counsel for the considerable work that may be involved in preparing written submissions. This is particularly so as I intend to impose time limits on the oral submissions. All parties with full standing and funding will be allowed up to forty hours for preparation of written and oral submissions. Counsel for Jason Roy, who has limited standing, will be allowed twenty hours of preparation time on the understanding that his submission should be restricted to issues directly impacting on Jason Roy.

Invoices for this preparation time, and attendance at the hearing of closing submissions should be submitted as a final invoice at the conclusion of the hearing of submissions.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 18th day of March, 2004.

Mr. Justice David H. Wright
Commissioner

Application for Standing and Funding by Deputy Chief Daniel Wiks

Deputy Chief, DANIEL WIKS, of the Saskatoon Police Service has applied for standing to allow his counsel to make closing submissions on his behalf. He also applies for funding.

Ruling on Standing

I grant standing to Deputy Chief Wiks for the purpose of allowing counsel to make closing submissions on his behalf. Deputy Chief Wiks testified on behalf of the Saskatoon Police Service. The Saskatoon Police Service is represented by counsel. I am advised, by his counsel, that Deputy Chief Wiks is subject to *The Police Act* proceedings relating to the Stonechild matter. As such, it is contended, the interests of the Saskatoon Police Service and Deputy Chief Wiks could potentially diverge. Counsel also asserts that Deputy Chief Wiks could be prejudiced in *The Police Act* proceedings, and damaged in his reputation, in the event an adverse finding is made against Deputy Chief Wiks. I am satisfied that he is directly and substantially affected by the Inquiry.

Counsel for Deputy Chief Wiks may file written submissions on or before May 14th, 2004. Oral submissions by his counsel shall be restricted to one-half hour.

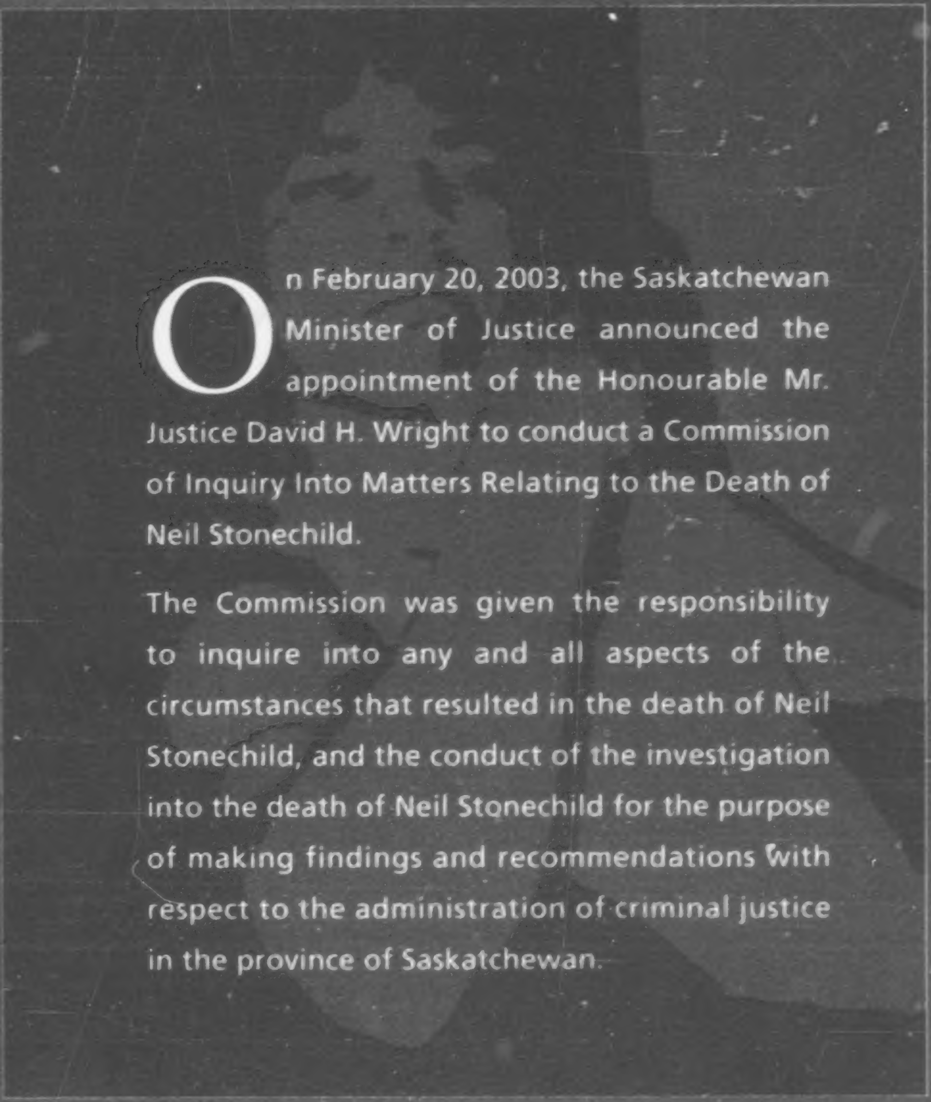
Ruling on Funding

I grant limited funding to Deputy Chief Wiks. His counsel shall be allowed ten hours to familiarize himself with the evidence and prepare written submissions. He will also be entitled to compensation for the time he is in attendance at the Inquiry for presentation of closing submissions.

Deputy Chief Wik's counsel, Mr. Danyliuk, has substantial experience, and I set his hourly rate at One Hundred and Ninety-Two ($192.00) dollars per hour. Counsel shall submit an invoice to the Commission Office following conclusion of closing submissions.

DATED at the city of Saskatoon, in the province of Saskatchewan, this 11th day of May, A.D. 2004.

Mr. Justice David H. Wright
Commissioner



On February 20, 2003, the Saskatchewan Minister of Justice announced the appointment of the Honourable Mr. Justice David H. Wright to conduct a Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild.

The Commission was given the responsibility to inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild, and the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the province of Saskatchewan.